



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2017

Coram:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No.545 of 2011

and

M.P. (MD) No.1 of 2011

The Management,
Tamilnadu State Transport Corporation Limited,
Madurai Division, Madurai-16
(Earlier Known as Management,
Tamilnadu State Transport Corporation
Dindigul Region, Dindigul).

.. Petitioner

-Vs-

1.The Presiding Officer,
Labour Court, Madurai,
Madurai District.

2.S.Subramani

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, calling for the records on the files of the 1st respondent pertaining to its proceedings in I.D.No.26 of 2008 dated 29.04.2010, quash the same.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.S.Govindan (for R2)

R1 - Court

ORDER

The petitioner has filed this writ petition for the issuance of Writ of Certiorarified Mandamus to call for the records on the files of the 1st respondent pertaining to its proceedings in I.D.No.26 of 2008 dated 29.04.2010 and to quash the same.

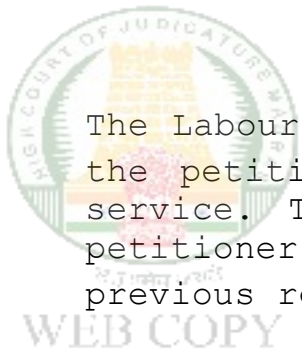
2.The petitioner is the Tamil Nadu State Transport Corporation Management. The 2nd respondent who was working as a conductor in the petitioner's Management was placed under suspension for



misappropriation of amount of Rs.16/- without issuing the Tickets to a group of two persons and thereby caused revenue loss to the Corporation. For the said misconduct of the 2nd respondent, the petitioner's management has framed charges against the 2nd respondent. After full fledged enquiry, the enquiry officer held that the charges leveled against the 2nd respondent were proved. Therefore the petitioner Corporation has terminated the service of the 2nd respondent by an order dated 09.12.2005. Aggrieved over the said order of dismissal, the 2nd respondent has filed I.D.No.26 of 2008 before the Labour Court, Madurai. The Learned Judge by order dated 29.04.2010 was pleased to set aside the order of dismissal and directed the Management to re-instate the 2nd respondent in to service with continuity of service, but without back wages. Being aggrieved over the said order of re-instatement, the Transport Corporation has come up with the present writ petition.

3.The Learned Counsel for the 2nd respondent contented that the Hon'ble Labour Court, on careful consideration of the 2nd respondent's case, has rightly set aside the order of dismissal by holding that the punishment is shockingly disproportionate to the charges. Therefore the Learned Counsel for the 2nd respondent has contended that the order of the Labour Court is not called for any interference by this Hon'ble Court. The Learned Counsel for the 2nd respondent further contented that after the award was passed by the Labour Court, the 2nd respondent sent a representation on 18.05.10 to the petitioner's Management with a request to implement the award of the Labour Court by re-instating him into service. Though the petitioner's Management has received the representations of the 2nd respondent, no order of re-instatement has been issued to the 2nd respondent.

4.I have heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner and Mr.S.Govindan, learned counsel appearing for the 2nd respondent and gone through the entire materials available on record. The main contention placed by the Learned Counsel for the petitioner is that the 2nd respondent has collected sum of Rs.16/- from two persons traveled in the bus and misappropriated the same without issuing the Tickets. Further, on verification it was revealed that there is a deficit amount of Rs.43.50 being the revenue loss to the Corporation. For that charges were framed against the 2nd respondent and in the enquiry, it was held that charges against the 2nd respondent were proved and he was terminated from service. The 2nd respondent challenging the order of the petitioner management before the Labour Court, Madurai by filing I.D.No.26 of 2008 and same was partly allowed.



The Labour Court while modifying the order of termination directed the petitioner management to reinstate the 2nd respondent in to service. The further contention of the Learned Counsel for the petitioner is that the Labour Court failed to consider the previous records of the 2nd respondent.

5. Per-contra the Learned Counsel for the 2nd respondent submitted that the order of punishment of dismissal from service is shockingly disproportionate to the charges leveled against the 2nd respondent. Therefore by considering the said legal proposition, the Labour Court has rightly set aside the order of dismissal and directed the petitioner management to re-instate the 2nd respondent into service, but without back wages. Therefore, the order of Labour Court has not warranted interference by this Hon'ble Court. In support of his contention, the Learned Counsel for the 2nd respondent has relied upon the following decision to strengthen his case.

1) 2014 (2) SCC 748 in the case of Ishwar Chandra Jayaswal . vs. Union of India and others.

2) 2015 (4) LLN 398 in the case of Depot Manager, APSRTC, Hyderabad .vs. Mohd. Khan and another

3) 2001 (2) SCC 574 in the case of Karnataka State Road Transport Corporation .vs. B.S.Hullikatti

4) 2014 (4) LLN 649 (Del) in the case of Delhi Transport Corporation .vs. Om Kanwar

5) The unreported Judgment in W.P.(MD)No.1273 of 2009 dated 16.4.14 in the case of The Management Tamil Nadu State Road Transport Corporation .vs. The presiding Officer

6) 2013 (4) LLN 1 (SC) in the case of Rajasthan State Road Transport Corporation & Ors. .vs. Babu Lal Jangir

7) 2009 (1) MLJ 975 in the case of The Tamil Nadu State Road Transport Corporation .vs. The Joint Commissioner of Labour (Conciliation), Chennai and Another

8) 2013 (III) LLJ 628 (Mad) in the case of The Management Tamil Nadu State Road Transport Corporation .vs. The Joint Commissioner of Labour (Conciliation), Chennai and Another

9) 2000 3SCC 450 in the case of U.P.State Road Transport Corporation .vs. Mahesh Kumar Mishra And Others

10) 2016 (1) LLN 267 (SC) in the case of Rajinder Kumar .vs. State of Haryana and another

11) 2014 (II) LLJ 295 (Mad) in the case of The Management Tamil Nadu State Road Transport Corporation .vs. Presiding Officer, III Additional Labour Court, Chennai.
<https://hcservices.ecourts.gov.in/hcservices/>

12) 2000 AIR 1151 in the case of U.P.State Road Transport



Corporation and others .vs. Mahesh kumar Mishra and others.

All the Judgments refereed above are dealt with issue relating to proportionality of punishment imposed on the employee.

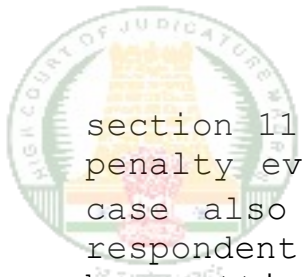
6. In one of the Judgment of the Hon'ble Apex Court reported in AIR 2000 S.C page 1151 in the case of the U.P. State Road Transport Corporation and others -Vs- Mahesh Kumar Mishra and others wherein at Paragraph 10 held as follows:

"10. As pointed out earlier, the order of the High Court through extremely brief, must have been based on overall consideration of the facts of the case and it must have exercised its jurisdiction only when it was shocked to notice that through all the passengers had been issued tickets, the only dispute was with regard to the point at which they had boarded the Bus for which the punishment of dismissal from service was highly disproportionate".

7. In an another Judgment of the Hon'ble Division Bench of this Hon'ble Court reported in 2014 (II) LLJ 295 Madras in the case of Managing Director, Tamil Nadu State Transport Corporation -Vs- Presiding Officer, III Additional Labour Court and another wherein in paragraph 10, it has been categorically held as follows:

"10. A careful analysis of the order in question shows that Learned Single Judge is right in holding that in absence of perversity, this Court, under Article 226 of the Constitution of India, cannot interfere with the award of the Labour Court, as the Labour Court has power under Section 11 -A of the Industrial Disputes Act to interfere with the penalty even in a case of charges being proved. Therefore, Learned Single Judge, keeping with the above position, has passed the order, confirming the award passed the order, confirming the award passed by the Labour Court, which, in our considered opinion, does not warrant any interference by this Court and thus, the writ appeal deserves merits consideration. Accordingly, the same is dismissed as devoid of merits."

8. Keeping in mind of the above decision of the Hon'ble Apex Court and this Hon'ble Court and the other Judgments produced by the learned counsel for the 2nd respondent, if the case on hand is analyzed, the quantum of punishment imposed on the 2nd respondent is shocking disproportionate. As per the Division Bench Judgment of our High Court referred above, the Labour Court has power under



section 11 (A) of the Industrial Dispute Act to interfere with the penalty even in the case of charges being proved. In the present case also the Management has held that charges against the 2nd respondent were proved and the Labour Court has passed the order by setting aside the order of dismissal. Therefore in my considered opinion the award passed by the Labour Court does not warrant any interference by this court.

9. In the result:

(a) this writ petition is dismissed, confirming the order passed by the 1st respondent in I.D.No.26 of 2008 dated 29.04.2010;

(b) the petitioner is hereby directed to reinstate the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order with continuity of service from the date of order of removal from service without any backwages for the non employment period;

(c) the writ petitioner is directed to complete the said exercise within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Madurai,
Madurai District.

+1 cc to M/s.S.C.Herold Singh, Advocate in SR.No. 4784

vsa/skn

CSL/JM/SAR-I/06.03.2017 : 5P/3C

order made in
W.P. (MD) No.545 of 2011
and
M.P. (MD) No.2 of 2011
30.01.2017