

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.20535 of 2004

V.M.Anandan

C/o RMTTC Workers Union (AITUC)

56,Subbha Naidu Street, North Rathaveedi
57,

Dindigul.

.... Petitioner

Vs

1.The Presiding Officer

Labour Court, Tiruchirapalli
Dindigul Camp.

2.The Management

Tamil Nadu State Transport Corporation
(Madurai Division IV) Limited, Dindigul.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the award made in I.D.No.115 of 1997 dated 03.09.2003 (received by the petitioner on 06.01.2004) on the file of the 1st respondent and quash the same and consequently direct the second respondent to reinstate the petitioner with full backwages, continuity of service and all attendant benefits.

For Petitioner : Ms.Rita Chandrasekhar
for M/s.Aiyar and Dolia

For Respondents : R1 - Court
Ms.Rajeni Ramadoss - for R2

W E B C O P Y
O R D E R

This writ petition has been filed by the petitioner / workman, challenging the award passed by the labour court dated 03.09.2003, confirming the finding of the Enquiry Officer, leading to the dismissal of the petitioner from service.

2. The brief facts leading to the filing of the present writ petition is as follows. The petitioner joined the second respondent Corporation as a Conductor. On 01.11.1994, while on

duty in the bus bearing Registration No.TN 57 0373, which was on a trip from Nagur to Palani, checking was conducted. He was informed by the Checking Inspector about the issuance of tickets to 31 passengers and also that an aged passenger got down before reaching Chatrapatti and that he had obtained a ticket from Dindigul to Palani from a passenger who got down at Dindigul and had re-issued it to another passenger. On the above charge, the petitioner was issued a spot memo calling for explanation.

3. A charge memo was issued on 08.11.1994, alleging misappropriation of money to the extent of Rs.8.20 paise and that two passengers tendered fare for travelling from Dindigul to Palani, but they were found having tickets for travel from Dindigul to Ottanchathiram and that the petitioner misappropriated a sum of Rs.7.60 paise. By the order dated 13.11.1994, the petitioner was placed under suspension. The order of suspension was revoked on 17.11.1994. On 18.11.1994, the petitioner submitted his explanation to the charge memo, refuting the charges. The respondent corporation conducted a domestic enquiry and during the pendency of the disciplinary proceedings, on account of his health, the petitioner could not participate in the enquiry. Ultimately, by the order dated 16.11.1995, he was dismissed from the services of the Corporation. Aggrieved by the same, the petitioner raised an industrial dispute in I.D.No.115 of 1997. The preliminary objection raised by the petitioner was that the domestic enquiry conducted by the Corporation was not just and proper. The labour court considered the circumstances under which the shortage of Rs.7.80 paise and Rs.8.20 paise had occurred, but has given a finding that it cannot amount to misappropriation and it is only a case of negligence in discharge of duties, for which the punishment imposed was appropriate.

4. The main contention raised by the learned counsel for the workman is that having found that there is no element of misappropriation in the charges levelled, the labour court should have modified the punishment.

5. Learned counsel appearing on behalf of the second respondent Corporation submits that the petitioner is guilty of misappropriation, which has caused loss to the respondent corporation and therefore he should be suitably punished. Learned counsel further submits that the corporation also relied upon the past records of the conductor that this was not the only occasion and that on earlier occasion also, he would be guilty of the same offence and therefore the punishment is justified.

6. A perusal of the award of the labour court would go to show that the labour court has extensively dealt with both the

charges and with respect to the first charge of misappropriation of Rs.8.20 paise, the labour court has given a finding that the petitioner has only violated the rules and allowed a passenger to travel with a ticket which was obtained from another passenger who had got down in the middle and as such there is no misappropriation and he had only caused loss to the respondent corporation by not collecting the fare from the passenger from Dindigul to Palani. With regard to the second charge of misappropriation of Rs.7.60 from two passengers, the labour court has given a finding that M.W.1 failed to obtain the statement from the said two passengers and that as it was midnight, and on the eve of Deepavali, the petitioner also could have been negligent in checking the number of passengers after crossing the stage of Ottanchattiram and the labour court came to a conclusion that there is an act of negligence on the part of the petitioner by not checking the passengers without tickets and thereby he has caused loss to the respondent.

7. The past records are not available before this Court. More over, the past records should have been furnished to the workman along with the charge memo. Hence, the reliance placed by the second respondent corporation on the past records cannot be taken note by this Court at this stage. Those documents should have been taken up before the labour court itself.

8. This Court is of the opinion that the long waiting from the year 1995 to 2018 itself is a sufficient punishment for the workman and no additional punishment need to be given to the petitioner. However, as pointed out by the learned counsel for the corporation, the backwages cannot be awarded taking into account the principle of "no work no pay" and in the absence of any documentary proof filed by the workman to prove that he had not been gainfully employed elsewhere all these years. However, the continuity of service shall be calculated on notional basis for the calculation of his terminal benefits alone.

9. In the result, the award passed by the labour court is set aside and the writ petition is allowed. No costs. The second respondent is directed to reinstate the workman, without backwages, but with continuity of service and other attendant benefits only for the calculation of terminal benefits, within a period of two weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

TO

1.The Presiding Officer
Labour Court, Tiruchirapalli
Dindigul Camp.

2.The Management
Tamil Nadu State Transport Corporation
(Madurai Division IV) Limited, Dindigul.

+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.74450

W.P.No.20535 of 2004

KK(CO)
GSP(20/12/2018)



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