

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.618 of 2015
and MP No.1 of 2015

The Management of Tamilnadu
State Transport Corporation Ltd,
Rep. By its General Manager,
Villupuram 606 602,
Villupuram District. Appellant

versus

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

2. Abdul Shukoor Respondents

Appeal filed against the order passed by this Court dated
23.04.2012 passed in W.P.No. 17619 of 2011.

WP.No. 17619 /2011 dated 23/04/2012 : Writ petition filed under
Article 226 of the Constitution of India to issue a Writ of
Certiorarified Mandamus calling for the records from the 1st
respondent relating to the Award in I.D. No.11/2005 dt
30.12.2010 and quash the said award dt 30.12.2010 and direct
the 2nd respondent management to pay backwages and other
attendant benefits from 2.7.1994 to the date of retirement and
award costs.

For appellant : Ms.B.Girija
for M/s.Antony Arokiya Raj

For 2nd Respondent : Mr.S.Ayyathurai

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This Intra Court Appeal is filed by the Management,
challenging the order in WP No.17619 of 2011 dated 23.04.2012,
in and by which, the learned Single Judge, while allowing the
Writ Petition filed by the employee, challenging the award of
the Labour Court in I.D.No.11 of 2005, directed payment of 50%

of the backwages from the date of termination i.e., 02.07.1994 till date of his retirement on reaching the age of superannuation on 28.11.2006, apart from granting all other attendant monetary benefits.

2. The Writ Petition came to be filed by the workman/2nd respondent herein, challenging the award of the Labour Court dated 30.12.2010, in and by which, the Labour Court has dismissed the I.D. No.11 of 2005, confirming the punishment of dismissal from service imposed on him for various malpractices said to have been committed by him, during the course of his service with the Management.

3. According to the Management, the 2nd respondent herein, joined as a conductor in the Management on 20.02.1968 and he was appointed as a permanent conductor on 01.03.1969. On 30.03.1994, a charge memo was issued to the second respondent, enlisting about 10 charges against him. He submitted his explanation on 17.04.1994. Since the explanation was found to be not satisfactory, a domestic enquiry was conducted against the 2nd respondent. The domestic enquiry was held on 06.05.1994 and the enquiry report was submitted. Based on the enquiry report the management issued a show cause notice to the second respondent. An explanation submitted by the second respondent on 30.05.1994. Rejecting the said explanation, an order of dismissal from service came to be passed on 10.07.1994. The 2nd respondent raised an Industrial Dispute, which was numbered as ID No.11 of 2005. The 2nd respondent, in the Industrial Dispute, contended that the domestic enquiry was not conducted in the proper manner and he was not given sufficient opportunity to defend himself.

4. The Management filed the written statement contending that the Industrial Dispute itself is barred by limitation. The claim of the second respondent was also resisted on merits. It was also contended that as per the report of the Enquiry Officer, the 2nd respondent was found guilty of all the charges.

5. Before the Labour Court, the employee examined himself as WW1. But the respondent/management did not examine any witness, however Ex.M1 to M16 were marked on the side of the respondent management. The enquiry proceedings dated 06.05.1994 was marked as Ex.M11. The findings of the enquiry officer based on which the order of the dismissal came to be passed on 02.07.1994 was marked as M15. Upon consideration of the entire material, the Labour Court came to the conclusion that the workman has not established his claim that the domestic enquiry was not properly conducted. The Labour Court also took note of

the reports of the Checking Inspector marked as M1 and M5 as well as the statement of the passenger in the bus. Upon consideration of the relevant material, the Labour Court came to the conclusion that the order of dismissal is justified and rejected the claim of the workman. On such findings, the Labour Court dismissed the Industrial Dispute, confirming the order of dismissal.

6. The said award of the Labour Court was challenged by the workman in WP. No.17619 of 2011 before this Court. The learned Single Judge, who heard the Writ Petition, on an analysis of the facts and circumstances of the case, concluded that the delay in raising the Industrial Dispute cannot be held to be fatal to the claim of the workman. The learned Single Judge also came to the conclusion that the charges framed against the petitioner are vague, bald and not specific. Referring to each and every charge, the learned Single Judge had come to the conclusion that the charges are based on presumptions and assumptions. The learned Single Judge had taken pain to examine each and every charge and had concluded that the charges are vague and not specific. Adverting to the conclusions of the Labour Court, it has been found that the Labour Court has relied upon the statements of witnesses to render a finding of guilt against the workman. Considering the fact that no witness was examined by the employer before the Labour Court, the learned Single Judge concluded that the findings of the Labour Court relating to misappropriation are based on presumption without any evidence on record. The learned Single Judge also took note of the fact the Labour Court has concluded that there is every chance for petitioner to reuse and resell the tickets in the return journey from Trichy to Tiruvannamalai and thereby had misappropriated the funds of the Corporation. On the above conclusions, the learned Single Judge found that the findings rendered by the Labour Court against the second respondent are erroneous, perverse and not based on evidence available on record. Taking note of the delay that had occurred in raising the Industrial Dispute and the fact that the workman attained the age of superannuation even during the pendency of the dispute before the Labour Court, the learned Single Judge, while setting aside the award of the Labour Court, directed the Management to pay 50% of the backwages from the date of termination i.e., from 02.07.1994 till the date of retirement i.e., on 28.11.2006.

7. Aggrieved the Management is on appeal.

8. We have heard Ms.B.Girija learned counsel appearing for M/s. A.Antony Arokiya Raj for the appellant and Mr.S.Ayyathurai learned counsel appearing for the 2nd respondent.

9. The learned counsel appearing for the appellant Corporation strenuously contends that the learned Single Judge sitting under Article 226 of the Constitution of India should not have gone into the factual matrix of the correctness and findings of the disciplinary proceedings or that of the Labour Court. Once the main contention of the workman that the domestic enquiry was not properly conducted and he was not given an effective opportunity before the disciplinary proceedings was rejected by the Labour Court, the Learned Single Judge ought not to have gone into the question relating to the vagueness of charges and reverse the factual findings of the Labour Court, which are based on at least some evidence.

10. Per contra, Mr.S.Ayyathurai, learned counsel appearing for the workman would contend that the Management did not choose to let in any evidence before the Labour Court. In the absence of such evidence, the Labour Court was not justified in relying upon the statements of witnesses made before the disciplinary enquiry and conclude that the charges against the workman stood established.

11. We have considered the rival submissions. The fact that the workman had attained the age of superannuation even during the pendency of the I.D. before the Labour Court is not in dispute. The learned Single Judge has recorded the finding that the charges and the statement of imputations are vague in nature and the learned Single Judge has also given reason for his conclusions. The learned Single Judge has also referred to the decision of the Hon'ble Supreme Court in Anil Gilurker v. Bilaspur Raipur Kshetria Gramin Bank & Anr., reported in 2011 (5) CTC 564, wherein the Hon'ble Supreme Court had observed as follows:

"7. A plain reading of the charges and the statement of imputations reproduced above would show that only vague allegations were made against the appellant that he had sanctioned loans to a large number of brick manufacturing units by committing irregularities, but did not disburse the entire loan amount to the borrowers and while a portion of the loan amount was deposited in the account of the borrowers, the balance was misappropriated by him and others. The details of the loan accounts or the names of the borrowers have not been mentioned in the charges. The amounts of loan which were sanctioned and the amounts which were actually disbursed to the borrowers and the amounts alleged to have been misappropriated by the appellant have not been mentioned.

8.

9. As has been held by this Court in *Surath Chandra Chakrabarty v. State of West Bengal* (supra):

"5. The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him....."

10. This position of law has been reiterated in the recent case of *Union of India & Ors. v. Gyan Chand Chattar* [2009 (12) SCC 78] and in Para 35 of the judgment as reported in the SCC, this Court has observed that the law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice and the charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges."

12. The charges framed, though ten in numbers, relate only to one incident of checking done on 27.03.1994, when the delinquent employee was operating as a conductor in the bus, bearing No.T.N.32-N-0032. The substance of the charges is that the delinquent employee when issuing the tickets bearing No.61309 to 61320 to the passenger had interchanged the boarding point and alighting point. This conduct has been split in to two charges. While the first charge relates to the interchange of boarding point and alighting point the second charge is that this interchanging had been done with an intention to re-issue the tickets and misappropriate the funds of the Corporation. The third charge relates to non-writing of trip sheet. The fourth charge relates to collection of excess fare from two passengers, who had actually boarded the bus at Siruvachur and instead of collecting Rs.7.20 from them as the fare, the delinquent employee had issued a ticket showing the boarding point as Perambalur and collected Rs.8.30 per ticket from them. The fifth charge is that the collection of excess fare had damaged

the reputation of the Corporation. The sixth charge is that the conductor had not collected the fare and issued ticket to a minor passenger, who was travelling in the bus from Perambalur to Trichy. The seventh charge is that he has caused loss of income to the Corporation to the tune of Rs.4.20 for not issuing tickets. The eighth charge is that there was a shortfall of Rs.18.40 in the cash available in the cash bag of the delinquent employee. The ninth charge was the misappropriation of the funds of the Corporation. The tenth charge is that he has committed misconduct during his work and behaved in an improper manner.

13. From the above charges, it could be seen that except in the case non issuance of a ticket to a minor passenger, none of the charges had resulted in loss of revenue to the Corporation. For the eighth charge, the explanation of the workman was that one passenger had insisted that he had not been paid the balance, despite the fact that the delinquent employee had paid the balance. This created a ruckus in the bus and in order to avoid any unpleasantness, he paid the balance amount again resulting in the short fall. The Management had taken note of the earlier misconduct of the workman and the minor punishments imposed on him. The Labour Court had confirmed the said findings despite the fact that there is no evidence on the side of the Management to prove his earlier misconduct. A perusal of the charges, the enquiry report as well as the order of dismissal and the award of the Labour Court would show that the finding of guilt on the part of the workman has been arrived at solely based on presumption and surmises, as rightly observed by the learned Single Judge. Therefore, we are of the considered view that the learned Single Judge was right in setting aside the order of dismissal.

14. However, we find that the direction to pay 50% of the backwages from the date of dismissal i.e., on 02.07.1994 till the date of superannuation on 28.11.2006 may not be justified. The fact that the workman had committed certain misconduct cannot be disputed. The learned Single Judge has interfered with the findings of the Labour Court solely on the ground that the charges were vague and non specific. At least some of the charges, viz. non issuance of the ticket to the minor passenger and deficit of Rs.18.40 in the cash bag cannot be stated to be non specific. But the said charges alone cannot lead to a capital punishment of dismissal from service. At the same time, the Corporation cannot also be burdened with the direction to pay 50% of the backwages. We are, therefore, of the opinion that the direction to pay 50% of the backwages cannot be sustained in the facts and circumstances of the case.

15. In fine, the Writ Appeal is partly allowed. The order of the learned Single Judge is modified, to the effect that the order of dismissal of the workman will be treated as an order of discharge and the direction to pay 50% backwages will stand set aside. We however, make it clear that the workman will be entitled to all the attendant monetary benefits including pension that he would have been entitled to, if he has not been dismissed from service from 02.07.1994. The Corporation shall work out the retirement benefits as well as the pension payable to the workman and same shall be paid within a period of six (6) months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

jv

To

1. The General Manager,
Management of Tamilnadu
State Transport Corporation Ltd,
Villupuram 606 602,
Villupuram District.

2. The Presiding Officer,
Labour Court,
Cuddalore,
Cuddalore District.

+1cc to Mr.S.Ayyathurai, Advocate SR.No.26217
+2cc to Mr.A.Antony Arockiaraja, Advocate SR.No.26322

W.A.No.618 of 2015
and MP No.1 of 2015

AD(CO)
GN(11/05/2018)