

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.4023 of 2008

D.Subramanian

... Petitioner

Vs.

1. The Management,
Tamil Nadu Government Transport
Corporation, Bharathipuram,
Dharmapuri - 2.

2. The Proceeding Officer,
Labour Court, Salem.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in I.D.No.309/2002 dated 09.03.2005 and quash the same was illegal and unlawful, and consequently, directing the 1st respondent to reinstate the petitioner with all continuity of service and other monetary benefits.

For Petitioner : Mr.V.Thirupathi

For R1 : Mr.R.K.Gandhi

R2 - Labour Court

ORDER

This Writ Petition has been filed to call for the records relating to the impugned order of the 2nd respondent in I.D.No.309/2002 dated 09.03.2005 and quash the same, and consequently, direct the 1st respondent to reinstate the petitioner with all continuity of service and other monetary benefits.

2. The petitioner was initially appointed as a conductor trainee and was regularised from 01.02.1997 under the pay scale of Rs.710-20-1870-25-2245. During the course of his employment as a conductor, enrouting from Krishnagiri to Dharmapuri, from 21.05.2000, the petitioner seems to have given expired old

tickets of 6 numbers, which was found by the checking inspector and accordingly, a charge memo was issued on the very same day, levelling two charges against the petitioner that (1) The petitioner has issued expired old six tickets to the passengers, each valued about Rs.10/- totaling Rs.60/- during the course of his employment on 21.05.2000 in Bus No.TN29 0782, which was enrouting from Krishnagiri to Dharmapuri . Further, the petitioner had excess cash of Rs.158 and apart from that, the petitioner has possessed 27 numbers of expired tickets/already used (2) The petitioner worked without duty conscious and against the principles and discipline, and acted independently and incurred loss to the department, and acted against the standing order in 16 E and K.

3. Pursuant to the charge memo, the petitioner gave explanation dated 19.07.2000, which was not considered and the 1st respondent initiated departmental enquiry and the petitioner attended the departmental enquiry to prove his innocence. However, the enquiry officer held all the charges proved and submitted his report on 16.09.2000. Further, a show cause notice was issued on 19.10.2000, to which, the petitioner had submitted his explanation dated 24.11.2000. However, without taking into consideration of the explanation rendered by the petitioner, the 1st respondent had dismissed the petitioner from service with effect from 16.04.2001.

4. Challenging the said order of dismissal, the petitioner had filed I.D.No.309 of 2000. However, the 2nd respondent had dismissed the said petition filed by the petitioner, while upholding the order of 1st respondent, which is under challenge in this Writ Petition.

5. The learned counsel appearing for the petitioner would vehemently contend that the order of dismissal passed by the respondents is a very serious punishment, which ought not to have been imposed on the petitioner's misconduct, which is a minor charge against the quantum of punishment imposed on the petitioner. Apart from the same, the learned counsel for the petitioner would contend that the Labour Court failed to see that no passengers were examined as witnesses on the side of the management and therefore, the correctness and veracity of the statement could be tested in the manner known to law.

6. The enquiry officer failed to appreciate that the excess cash in the petitioner's hand bag was the petitioner's own money, which is only a sum of Rs.156/- and relying on the enquiry report blindly, the first respondent has dismissed the petitioner from service. The Labour Court has dismissed the petition filed by the petitioner, confirming the order of dismissal.

7. The learned counsel for R1, Mr.R.K.Gandhi would contend that there is no violation of principles of natural Justice, as

the petitioner himself had accepted during the enquiry that the petitioner had in fact sold expired tickets, which itself is prima facie sufficient to hold the charges proved and the punishment of dismissal imposed on the petitioner is just and proper.

8. Heard the learned counsel for the petitioner and the learned counsel for the first respondent, and perused the materials available on records.

9. From the perusal of the enquiry report, it is clear that the petitioner has intentionally sold invalid tickets to the passengers, to which, the petitioner had confessed and accepted the same on the very same day, in writing. The petitioner in the present case has not made any allegation, with regard to the conduct of enquiry, as the enquiry had been conducted with full participation of the petitioner, which reveals from the records.

10. On pursuing the order passed by the 2nd respondent, it could be seen that the petitioner has not come forward, either to examine himself or to produce any documentary evidence to prove his innocence. The management has marked Exs.D1 to D18, which includes Ex.D5, the statement of passenger obtained on the day of occurrence. Apart from that, the management has also filed Ex.D6, the inspection report of the conductor's bag, which is found with excess cash, which does not belong to the petitioner. As the petitioner did not produce any contra evidences against the oral and documentary evidence produced by the respondent management, the Labour Court dismissed the Industrial Dispute raised by the petitioner. As far as the quantum of the punishment, it is to be seen that the petitioner by giving expired tickets to the passengers has unjustly enriched himself. It may be the one incident, in which, the petitioner was caught. However, the petitioner would have been involving in such illegal act, until he was caught on 21.05.2000. For such type of charges, there cannot be any alternative punishment other than the dismissal from service. Hence, the order of dismissal is not disproportionate to the charges levelled against the petitioner.

11. Under these circumstances, this Court is of the view that the order passed in I.D.No.309/2 cannot be interfered, as the same is a well reasoned one. Hence, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja

To

1.The Management,
Tamil Nadu Government Transport Corporation,
Salem Division - II,
Dharmapuri - 2.

2.The Management,
Tamil Nadu Transport Corporation,
Bharathipuram, Dharmapuri.
Dharmapuri -2.

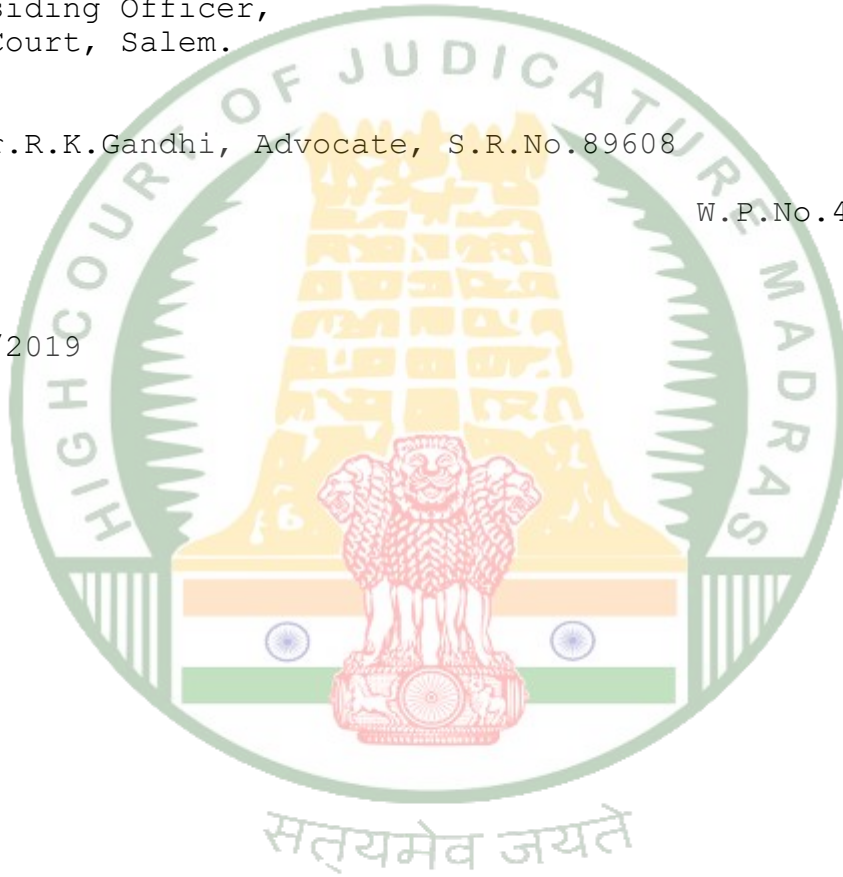
3.The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.R.K.Gandhi, Advocate, S.R.No.89608

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PA(CO)

rrs 07/03/2019



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