



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2005 of 2018
C.M.P.No.15894 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation,
(Salem Division II) Ltd.,
Bharathipuram, Dharmapuri - 5. .. Appellant

Vs.

1.Hayath John
2.The Presiding Officer,
Labour Court,
Salem. .. Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order, dated 18.12.2017, passed in W.P.No.27287 of 2003.

Prayer in WP.No.27287 of 2003:Writ of certiorari to call for the records of dated 3.11.2002 and made in I.D.No.285/99 on the file of the Labour Court, Salem the 2nd Respondent herein and quash the same.

For Appellant : Ms.S.Rajeni Ramadass

JUDGMENT

(Judgment of this Court was made by SUBRAMONIUM PRASAD, J.)

The Managing Director, Tamil Nadu State Transport Corporation, (Salem Division II) Ltd., Bharathipuram, Dharmapuri, has filed the instant writ appeal, against the order, dated 18.12.2017, made in W.P.No.27287 of 2003, by which, the learned Single Judge, has upheld the award passed by the Labour Court, Salem, modifying the punishment of dismissal from service, passed by the appellant-corporation and ordered reinstatement of Hayath John, first respondent herein, on the present salary basis without backwages, continuity of service and other perks.

2. The first respondent herein was employed as a Conductor, with the appellant-transport corporation. On 14.02.1995, the



Checking Inspector, checked the bill book, wherein, it was found that he had not issued tickets for six luggages, but issued nine tickets for the luggages and having an excess cash of Rs.28.20, in his cash bag. The first respondent was suspended from service and a show cause notice was issued to him, for which, an explanation was submitted by the first respondent. As the said explanation was not accepted, an enquiry was ordered and the first respondent was dismissed from service on 16.07.1996. The Labour Court, on examining the evidence, observed as under:-

"The charges against the petitioner are not issuing tickets for 6 luggages, keeping excess cash of Rs.28.20 and the invoice was filled up without meaning and responsibility. Exhibit A-11 is the reply by the petitioner. He has stated that while he was issuing the tickets the bus has reached Veppalapatti and the checking inspector has entered the bus and when he was giving the tickets with the passengers he was prevented and the tickets and the case bag were forcibly taken from him. The charge against the petitioner is not give the tickets for the money received for the 6 luggages. However there was Rs.28.20 cash in excess in the bag. The total for 6 tickets is only Rs.12. However for the excess cash the first and second management witnesses had given explanation. According to them at the cost of Rs.2/- per ticket 13 tickets Costs Rs.26/- and for the another ticket Rs.2.20/- total Rs.28.20. The charge against the petitioner is not issuing 13 tickets. The petitioner has given his explanation for the excess cash in the bag. In that explanation he has given that 1 passenger has got down from the bus without taking the change due for him and it came to the office of the next day and collected that balance change. The charge is that the petitioner has not filled up the invoice properly. However that invoice has not been submitted in this court. If that invoice was submitted in the court it would have been possible whether the petitioner has written down the tickets for which money was collected.

It is seen that the petitioner has taken the amount for the tickets. But while he was issuing the tickets the checking inspectors had intercepted. The explanation given by the petitioner suits the excess cash in his bag. There is a perceptible difference between Exhibit A-1 and A-9."

3. On examination, the Labour Court, found that it is not a case of misappropriation and therefore, held that the penalty of dismissal from service, was excess and ought not to be granted. The Labour Court directed the appellant-corporation to reinstate



the first respondent in service, without any backwages and continuity of service and other perks.

4. Being aggrieved by the order of the Labour Court, the appellant-Transport Corporation has filed W.P.No27287 of 2003. The learned Single Judge, vide order, dated 18.12.2017, held as hereunder:-

"14. Since, the two issues ie., one is non issuance of six tickets for the luggages held by one passenger and the excess amount of Rs.28.20 at the cash bag of the first respondent employee, were found that, those charges had not been proved against the first respondent employee on the clear evidences, who deposed before the Enquiry Officer, hence the Labour Court has come to the right conclusion that the punishment of dismissal from service inflicted against the first respondent was not justified and accordingly, the Labour Court decided to set aside the same.

15. In fact, in the impugned award, though the punishment was set aside by the Labour Court with a direction to the petitioner Corporation to reinstate into the service, the Labour Court has denied the back wages, continuity of service and all other benefits. Against those findings admittedly, no petition has been filed before this Court under Article 226 of Constitution of India by the first respondent employee. Therefore, the only remedy, which was allowed for, is the reinstatement of the first respondent/employee.

16. On considering all these aspects based on the evidences recorded by the Enquiry Officer, which has been appreciated and re-appreciated by the Labour Court, as has been extracted above, this Court finds that there is no perverse findings on the part of the second respondent Labour Court, in the impugned order. It is settled proposition of law that the evidence can be re-appreciated by the Labour Court, and such power is always available with the Labour Court, especially under Section 11 A of the Industrial Dispute Act and in this case, the Labour Court has rightly exercised such power by re-appreciating, the evidences as the direct evidence had not been considered or rejected or declared to be unbelievable by the Enquiry Officer. Such exercise on the part of the Labour Court, which is reflected in the impugned award, in the opinion of this Court, is strictly in accordance with the provisions of the Industrial Dispute Act, especially under Section 11A of Act and therefore, this Court finds that there is no infirmity in the impugned award.



5. The said order is assailed by the appellant-Transport Corporation in the present writ appeal.

6. Ms.S.Rajeni Ramadass, learned counsel for the appellant-corporation, vehemently contended that this is a case of mis-appropriation of money and the labour court has failed to consider the evidence rendered by the checking inspector and other documentary evidence. She further contended that mis-appropriation is an extremely serious charge and that the conductor, who has misappropriated the public funds, deserves to be dismissed.

Heard the learned counsel appearing for the appellant and perused the materials on record.

7. On a perusal of the material on record, we find that the present case is not a case of mis-appropriation, but an excess cash of Rs.28.20 was found in the cash bag of the first respondent. The learned Single Judge, held that the charges of mis-appropriation had not been proved against the first respondent herein. It was further held that even though the enquiry officer had recorded the statement of the witnesses, who are non other than the passengers, involved in that incident, the enquiry officer has simply brushed aside their statements, by merely giving a reason that both the statements are unbelievable.

8. The first respondent has retired from service on 31.08.2016. Any issue, if decided now, at this length of time, almost after two years, after his retirement, would not serve any purpose. Both the orders of the learned Single Judge and Labour Court, are not perverse and this Court need not reverse the same.

9. Learned counsel for the appellant-corporation submitted that the backwages, under Section 17(B) of the Industrial Disputes Act, 1947, has not been paid. Section 17(B) of the Industrial Disputes Act, 1947 reads as under:-

"Section 17B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:



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Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

10. While directing the appellant-corporation to reinstate the first respondent in service, the Labour Court has failed to award any backwages and continuity of service and other perks. The said award was confirmed by the learned Single Judge. Therefore, we direct the appellant/Corporation, to make payment of wages due under Section 17(B) of the Industrial Disputes Act, 1947.

11. In view of the above, writ appeal is dismissed. No Costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dm

+1cc to Mr.S.Rajeni Rama Doss, Advocate SR.NO.61859

KAN(CO)
sm:1.11.2018

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