



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2018
Pronounced on : 04.06.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**W.P.(MD)Nos.16769 of 2014 & 11468 of 2017****and****M.P.(MD)No.1 of 2014**W.P.(MD)No.16769 of 2014:

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division IV) Limited,
Pillai Thanneer Pandhal,
Pudukkottai.

... Petitioner

Vs.

1.R.Ravi
2.The Presiding Officer,
Labour Court,
Tiruchirappalli.
Respondents

...

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd respondent dated 05.09.2012 in I.D.No.138 of 2003 and quash the same.

For Petitioner	:	Mr.D.Sivaraman
For R.1	:	Mr.A.Rahul
R.2	:	Court

W.P.(MD)No.11468 of 2017:

R.Ravi

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirappalli.

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division IV) Limited,
Pillai Thanneer Pandhal,
Pudukkottai.

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus, calling for the records relating to the impugned order passed by the 1st respondent Labour Court dated 05.09.2012 in I.D.No.138 of 2003 and quash the same, insofar as not granting the petitioner's back wages and other attendant benefits and consequently direct the respondents to reinstate him in service with continuity of service, back wages and all other attendant service benefits to the petitioner from the date of his dismissal to the date of reinstatement.

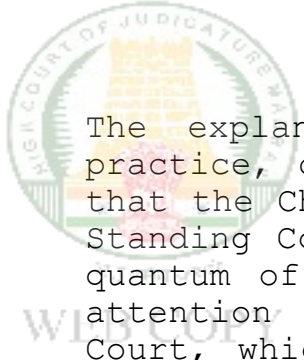
For Petitioner : Mr.A.Rahul
 For R.2 : Mr.D.Sivaraman
 R.1 : Court

COMMON ORDER

One Ravi was working as a Conductor in TNSTC (Kumbakonam Division IV Ltd). On 05.01.2000, while he was on duty, the bus was checked by Checking Inspector and it was found that in three tickets, the said Ravi had made some corrections by putting a plus (+) symbol and adding a higher amount against the original amount for which the tickets were issued. The Management took the view that this was done with an intention to defraud the collection amount and that the said Ravi had done so by collecting the lesser fare tickets already issued to the short distance passengers and re-issued the same by adding further amount to the long distance passengers. The Checking Inspector intimated the Management about the acts of the delinquent/conductor.

2. The said Ravi was placed under suspension on 27.01.2000. Charge memo was issued on 08.02.2000. After holding enquiry and issuing show cause notice, he was dismissed from service on 15.09.2001. The delinquent raised an Industrial Dispute in I.D.No.138 of 2003 before the Labour Court, Tiruchirappalli. By award dated 05.09.2012, the Labour Court set aside the order of dismissal and directed reinstatement of the petitioner with continuity of service. However, back wages were denied. Though the award was passed on 05.09.2012, the Management did not comply with the same. It filed W.P.(MD)No.16769 of 2014 questioning the award. The delinquent/conductor also filed W.P.(MD)No.11468 of 2017 questioning the award insofar as the denial of back wages and other attendant benefits to him. Since both the writ petitions are pertaining to the same award, this Court clubbed them together and heard the Counsel on either side.

3. The learned Standing Counsel appearing for the Transport Corporation pointed out that the delinquent had not disputed the alterations made in the tickets and that on his own showing, he stood condemned. The learned Standing Counsel submitted that the delinquent/conductor had taken back the used tickets from the passengers and re-issued them to other passengers by adding additional amount in the tickets so as to equate the fare amount.



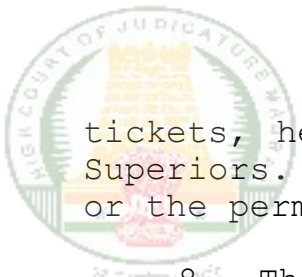
The explanation given by the delinquent that it was a usual practice, cannot be accepted. It is not the case of the delinquent that the Checking Inspector had any motive or animosity on him. The Standing Counsel also brought to the notice of this Court that the quantum of misappropriation is not a relevant factor. He drew the attention of this Court to the decisions of the Hon'ble Supreme Court, which viewed misappropriation by conductors very seriously. He wanted this Court to set aside the impugned award in toto.

4. Per contra, the learned Counsel appearing for the delinquent/conductor submitted that having found that the charges against the petitioner were not established, the Labour Court ought to have awarded back wages also. He highlighted the fact that the Management did not take immediate steps to question the impugned award. When the Labour Court directed reinstatement of the delinquent, the Management ought to have complied with the same.

5. The learned Counsel for the delinquent/conductor filed his written notes. This Court considered the rival contentions put forth on either side carefully.

6. The charge against the said Ravi was that he collected back the low fare tickets from the passengers and re-issued the same to the long distance travelling passengers by putting plus (+) mark and writing additional fare in addition to the original fare written in the tickets. This is how the delinquent/conductor is said to have misappropriated a sum of Rs.299/-.

7. The learned Counsel appearing for the delinquent/conductor took this Court through the contents of the enquiry report. Even though the charges framed against the employer were only three, the same was split into five charges. In fact, the Enquiry Officer held that the charge of misappropriation was not proved. But then the Enquiry Officer held that there has been violation of rules on the part of the delinquent. The delinquent's explanation is that he joined the Corporation as a conductor on 15.12.1998 and was made permanent on 15.12.1999. He was posted to work at Ponnamaravathy Depot. He was kept as a spare conductor and was not assigned and given any regular posting. Even during training, he was not given any written or oral instructions as regards the procedures to be followed while issuing tickets. When he was given duty in Town services, the petitioner would be given printed ticket books. But, when given duty in Mofussil services, he would be given ticket books, where the fare denominations would not be printed. Therefore, to avoid delay in issuing tickets, the delinquent used to write the tickets in advance for short distance travel and also for the place to which more passengers used to travel in that route. If the number of passengers did not board into the bus equal to the number of tickets which he had already written, after issuing those tickets to the available passengers, he would use the balance written tickets for other passengers by adding the required fare in those tickets. Though he was having this practice to avoid delay in issuing



tickets, he was never pulled up by the Checking Inspectors or the Superiors. He was never told that this was not the correct procedure or the permissible one.

8. The Labour Court found the explanation offered by the petitioner to be credible and convincing. Even the Enquiry Officer appears to have been convinced by this explanation. That is why, he did not hold the delinquent to be guilty of the charge of misappropriation. The core allegation against the delinquent is that he collected the issued tickets from the passengers and re-issued the same and thus, involved in misappropriation.

9. The learned Counsel for the delinquent/conductor placed reliance on the decision of the Hon'ble Supreme Court reported in 2017-(3)-LLJ-257 (SC) in the case of A.P.S.R.T.C., Rep. by Depot Manager v. G.Murali. The Industrial Court in the said decision had taken the view that as the passengers were not produced in the enquiry, the charge cannot be held to have been proved. The Hon'ble Supreme Court held that the order of the Industrial Court exonerating the delinquent was on good grounds and did not warrant any interference, as the passengers were not produced for cross examination, especially when the delinquent had denied the charges of collecting fare and non-issuing of tickets.

10. The Labour Court in the present case observed that the Checking Inspector had not examined the passengers and no statement was obtained from them. There was no material available before the Checking Inspector to come to the conclusion that the short distance passengers' tickets were collected back and re-issued for long distance passengers with higher fare. The foundation for the disciplinary action is on presumption. It was also observed that there is no provision in the standing orders that mandates the writing of the fare amount in a certain manner. This Court, therefore, finds that the award of the Labour Court in setting aside the order of dismissal does not warrant any interference.

11. However, this Court is of the view that the back wages were rightly denied by the Labour Court. It is seen that the delinquent was made as a permanent conductor only in the year 1999. The occurrence had taken place on 05.01.2000. For over nine years, the case was pending before the Labour Court. The Management had specifically alleged that the delinquent had not co-operated in expediting the domestic enquiry. The Labour Court had also observed that the workman had not offered or proved that he was not in gainful employment elsewhere during the period in question. Therefore, this Court declines to interfere with the order of the Labour Court in declining back wages. However, the Management will have to give back wages to the conductor/delinquent from 05.09.2012 onwards.

12. In result, both the writ petitions are dismissed and the impugned award passed by the Labour Court dated 05.09.2012 stands



confirmed.
is closed.

No costs. Consequently, connected miscellaneous petition

Sd/-

Assistant Registrar (CS-I)

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/True copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Tiruchirappalli.

+1cc to Mr.D.Sivaraman, Advocate, SR.No.66587.

Order made in
W.P. (MD) Nos.16769 of 2014 & 11468 of 2017
04.06.2018

gk

RAM/SV MMS/SAR 1/13.06.2018/5P/3C