



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.6204 of 2013

and

M.P. (MD) No.1 of 2013

Management,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Madurai Division, Bye Pass Road,
Madurai.

... Petitioner

-Vs-

1.The Presiding Officer,
Labour Court, Madurai.

2.J.Karunai Anandhan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records in I.D.No.81 of 2011 dated 08.10.2012 on the file of the first respondent and quash the same.

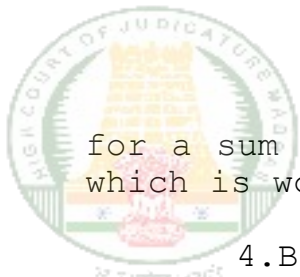
For Petitioner : Mr.A.Jeyaram
For R2 : Mr.M.G.M.Xavier

ORDER

The prayer sought for herein is for a Writ of Certiorari, calling for the records in I.D.No.81 of 2011 dated 08.10.2012 on the file of the first respondent and quash the same.

2.Heard Mr.A.Jeyaram, learned counsel appearing for the petitioner and Mr.M.G.M.Xavier, learned counsel appearing for the second respondent.

3.The second respondent was working as a Conductor at the petitioner's Corporation. On 17.05.2002, while he was on duty in the bus bearing Registration No.TN-59-0925 in the route between Kodaikanal and Tirunelveli, the bus was checked by the Checking Inspector at Kayathar, Tirunelveli District. According to the petitioner, at that time, six passengers were inside the bus and three passengers were travelling from Madurai to Tirunelveli. It was the case of the petitioner Corporation that when the Checking Inspector verified with the passengers, he found that after receiving a sum of Rs.144/- from three passengers, who travelled from Madurai to Tirunelveli, for issuing tickets each for Rs.48/-, the second respondent had issued only 2 ½ tickets i.e,



for a sum of Rs.120/- by which the remaining amount of $\frac{1}{2}$ ticket, which is worth about Rs.24/-, he had misappropriated.

4. Based on the said incident, a report was given by the Checking Inspector and accordingly, domestic enquiry was conducted by the petitioner Corporation against the second respondent and in the domestic enquiry, it was found that the second respondent was guilty of misappropriation of the said amount, and accordingly, the petitioner Corporation inflicted the punishment of removal on the second respondent.

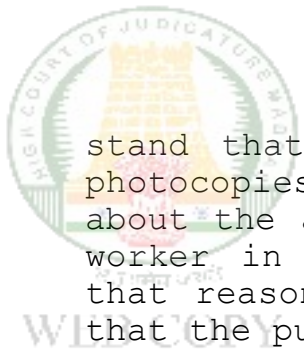
5. As against the said award of punishment, the second respondent had not immediately raised any industrial dispute and in fact after the period of eight years, an industrial dispute was raised only on 14.12.2011 for the removal took place on 22.11.2003.

6. Before the Labour Court, claim petition and counter affidavit were filed by the parties.

7. On behalf of the petitioner Management, 14 documents from Ex.M1 to Ex.M14 were marked. On behalf of the second respondent worker, 8 documents from Ex.W1 to Ex.W8 were marked. After hearing the case of both sides and after analysing the evidences adduced by both sides, the Labour Court, by an award dated 08.10.2012, has allowed the said I.D.No.81 of 2011 to the extent that the second respondent worker shall be entitled to get reinstatement, however, without back wages and also the Labour Court has not allowed the period between 22.11.2003 and 14.12.2011 for the purpose of any service benefits like continuity of service, because, during these periods, the second respondent admittedly had not raised any industrial dispute without any plausible reason and therefore, that period was directed to be not taken into account for the purpose of any service benefits. As against the said award dated 08.11.2012, the Management preferred the present Writ Petition with the aforesaid prayer.

8. The learned counsel appearing for the petitioner Corporation would submit that, the Labour Court though had found that the domestic enquiry was conducted properly in accordance with the principles of natural justice, it could not have taken a decision that the evidences produced before the Labour Court by the Management was vague.

9. If at all the Labour Court thought of verifying the photocopies filed before the Labour Court as evidence by the Management side, a direction could have been issued to that effect and in that case, certainly the petitioner Management would have been in a position to produce the originals before the Labour Court for perusal. Without directing the petitioner Management to produce original, the Labour Court had taken a



stand that the documents produced by the Management side were photocopies, from which, the Labour Court was not able to find about the alleged tampering on the side of the second respondent worker in the ticket book and invoice and therefore, based on that reasoning alone, the Labour Court had come to a conclusion that the punishment imposed against the worker was not justified.

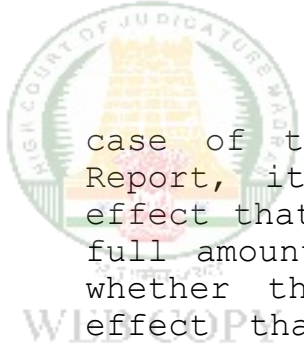
10. Per contra, Mr. M. G. M. Xavier, learned counsel appearing for the second respondent worker would submit that, admittedly, no passenger was enquired by the Checking Inspector and no statement had been obtained from any of the passengers and in the absence of the same, the very basis of the allegations made against the second respondent could have no legs to stand. This position has been properly appreciated by the Labour Court and after taking into account the weakness of the case on the side of the Management as they have not filed any supporting documents that too by way of original to substantiate their case, the Labour Court come to a right conclusion that the punishment that too maximum punishment of removal from service inflicted against the second respondent was unjustifiable and accordingly, the Labour Court passed the award.

11. The learned counsel appearing for the second respondent would further submit that, since the Labour Court has cautiously passed the award by not giving back wages to the second respondent and also not giving any benefit for the nine years period by putting the blame on the second respondent for not having raised industrial dispute, the Labour Court has given a well balanced award and therefore, absolutely, there is no scope for interference in the said award.

12. I have considered the said submissions of the learned counsel on either sides and also perused the materials placed before this Court, including the impugned award of the Labour Court.

13. As has been noted by the Labour Court, though the Labour Court found that domestic enquiry was conducted properly in the context of natural justice, with regard to the strength of the evidence, the Labour Court has come to the conclusion that the punishment awarded against the second respondent was not justifiable.

14. Before the Labour Court even though 14 documents were marked on behalf of the petitioner Management, none of the documents were original and photocopies were marked before the Labour Court. The main basis of the Management case is, based on the Checking Inspector's report dated 18.05.2002. Along with the said Checking Inspector's Report, the invoices and tickets issued by the Conductor and statement of the Conductor had been produced before the Labour Court. Apart from these documents, no other documents were produced before the Labour Court to support the



case of the Management. Even from the Checking Inspector's Report, it seems that he had not given any statement to the effect that the passengers, from whom the Conductor had collected full amount of three tickets and issued 2 ½ tickets and if so, whether the passengers had given any such statement to that effect that they have given full amount for three tickets, whereas the Conductor given 2 ½ tickets.

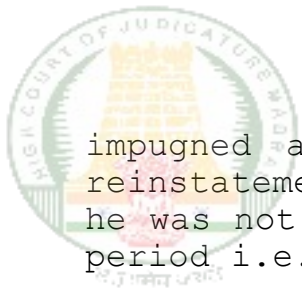
15.The allegation made against the second respondent was that, he after having received full amount for three passengers from Madurai to Tirunelveli, had issued 2 ½ tickets and by thus taken for a sum of Rs.24/-. If that being so, the Checking Inspector, who said to have found the said mistake on the part of the Conductor, could have very well got the statement from the passengers concerned or atleast the Checking Inspector could have noted in his statement that they are the passengers and they claimed to have given full amount for three tickets and the Conductor had given, however, only 2 ½ tickets. In the absence of these very basic information, if the Checking Inspector's report is given and based on which, if charges were framed against the Conductor and enquiry was conducted in this regard it can be concluded that there is no basic material available against the delinquent to lay charges. This aspect has been considered by the Labour Court.

16.That apart the report of the Checking Inspector in the absence of any such statement said to have been obtained from the passengers concerned, was considered by the Labour Court as a vague one. The Labour Court had also found that the original tickets since have not been produced by the Management, it cannot be ascertained as to whether the Conductor has committed any tampering, and only based on these aspects, the Labour Court had come to the conclusion that the punishment awarded against the worker was unjustifiable.

17.The relevant portion of the said finding given by the Labour Court is extracted hereunder:-

"In this case, the report of the ticket inspector is vague. The respondent has not filed the original ticket to show that the petitioner has committed manipulation in the ticket. Under the circumstances, the punishment imposed on the petitioner is not justified."

18.After finding that the punishment awarded against the Conductor was not justifiable, the Labour Court has further went to the aspect on what relief to be given to the worker. In this regard, the Labour Court noted that the worker had not raised any industrial dispute for eight years, as he was removed from service on 22.11.2003, whereas he raised industrial dispute only on 14.12.2011. Therefore the Labour Court very cautiously made the



impugned award that the second respondent is entitled to get reinstatement, however, he is not entitled to get back wages and he was not entitled to any continuity of service between the said period i.e., 22.11.2003 to 14.12.2011.

19. After having gone through the said award passed by the Labour Court, which is impugned herein, on the strength of the evidence produced before this Court, this Court is of the considered view that absolutely there is no perversity in the said award given by the Labour Court.

20. This Court under Article 226 of the Constitution of India cannot sit upon and reappraise the evidences adduced by the parties before the Labour Court. Since it is an admitted fact that only photocopies were filed and based on which, the Labour Court was not in a position to ascertain about the allegations made by the Management against the worker, this Court cannot go into the order, as it is the failure on the part of the Management to produce proper evidences before the Labour Court.

21. For all these reasons, this Court while not interfering with the said award passed by the Labour Court, is of the considered view that the second respondent worker since has superannuated by 30.06.2014 and admittedly, he had not attended duty even after the impugned award passed and the said period, which is impugned herein, can be modified to some extent to meet the end of justice.

22. In the result, this Writ Petition is disposed of with the following order:-

(i) The impugned award of the Labour Court made in I.D.No.81 of 2011 dated 08.10.2012 is modified that the second respondent worker shall be entitled to get back wages at 50% for the period between 08.10.2012 (date of passing award) and 30.06.2014 (date of superannuation).

(ii) Since the second respondent was receiving 17B back wages for this period, 50% salary payable to the second respondent during the aforesaid period shall be calculated and from the said amount, total amount received by the second respondent by way of 17B back wages shall be deducted and still some amount remains, the same shall be paid to the second respondent by the petitioner Management, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) For the purpose of continuity of service and other service benefits, the Labour Court award is confirmed, i.e., for the period between 22.11.2003 and 14.12.2011. The remaining period shall be treated as service for other service benefits of the second respondent.



23. With these modifications, this Writ Petition is ordered. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-III)

To

The Presiding Officer,
Labour Court,
Madurai.

+1 CC To MR.G.M.XAVIER, Advocate SR. NO. 74069

W.P (MD) No. 6204 of 2013
19.07.2018

MYR

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