

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.34557 of 2003

Tamil Nadu State Transport
Corporation (Madurai Division II) Ltd.,
Tirunelveli rep. by its
Managing Director.

.. Petitioner

Vs.

1.The Presiding Officer
Labour Court, Tirunelveli.

2.S.Asokan
C/o.The General Secretary
Nellai Chidambaranar Kumari District
Government Transport Workers Union
Parasakthi Buildings
Tirunelveli Junction.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for records in I.D.No.75 of 97 on the file of the 1st respondent dated 19.12.2002 and quash the same as arbitrary and without jurisdiction.

For Petitioner : Mr.K.J.Sivakumar

For R2 : Mr.A.Purushothaman for
Mr.V.Raghavachari

O R D E R

Writ Petition is filed for issuance of a writ of Certiorari calling for records in I.D.No.75 of 97 on the file of the 1st respondent dated 19.12.2002, quash the same as arbitrary and without jurisdiction.

2.When the matter was taken up for hearing on 30.07.2019, there was no representation on behalf of the petitioner. This Court directed Mr.K.J.Sivakumar, the learned counsel to take notice for the petitioner and argue the matter.

Mr.K.J.Sivakumar, the learned counsel took notice and argued the matter.

3.Heard Mr.K.J.Sivakumar, the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 2nd respondent and perused the materials available on record.

4. The 2nd respondent was working as a driver in the petitioner-Transport Corporation. On receipt of complaint, the petitioner issued a charge memo dated 10.06.1993 alleging that the 2nd respondent failed to check the diesel level of the bus bearing Registration No.TML 1130 on 25.05.1993. The 2nd respondent submitted his explanation on 28.06.1993. Not being satisfied with the explanation submitted by the 2nd respondent, the petitioner appointed Enquiry Officer. The Enquiry Officer after giving full opportunity to the 2nd respondent conducted domestic enquiry in accordance with the principles of natural justice. The Enquiry Officer held that the charges levelled against the 2nd respondent are proved and submitted his report on 17.10.1993. The petitioner-Transport Corporation issued 2nd show cause notice and the 2nd respondent submitted his explanation on 17.01.1994. Not being satisfied with the explanation submitted by the 2nd respondent, the petitioner-Transport Corporation, by order dated 02.03.1994 imposed punishment of stoppage of annual increment for two years with cumulative effect. Against the said order of punishment, the 2nd respondent raised industrial dispute in I.D.No.75 of 1997 before the 1st respondent. The 1st respondent considering the pleadings, oral and documentary evidence, held that failure is on the part of the officials of the petitioner-Transport Corporation, who has checked the vehicle before sending them for service to the public. Hence, fixing responsibility on the 2nd respondent without taking any action against the officials, who are responsible to check the bus before sending them for service to the public, is not fair on the part of the petitioner-Transport Corporation and set aside the order of punishment imposed on the 2nd respondent.

5.The learned counsel appearing for the petitioner-Transport Corporation contended that the 1st respondent erred in holding that the evidence of M.W.1 is not sufficient to prove the charges levelled against the 2nd respondent. The 1st respondent acted as Appellate Court in re-appreciating the evidence. The 1st respondent erred in fixing the responsibility on the officials of the petitioner-Transport Corporation while the mistake is only on the part of the 2nd respondent.

6.From the materials available on record, it is seen that it is the specific case of the 2nd respondent that Assistant Engineer one K.Palaniappan is responsible for checking up oil

and diesel level before sending the bus to the public. Further, after filling up the diesel, the same must be entered into log book. When the 2nd respondent asked Palaniappan, he was informed that diesel was filled up and the same was not entered in the log book due to insufficiency of the staff. In spite of such a specific plea taken by the 2nd respondent, the petitioner-Transport Corporation did not examine the said Palaniappan before the Labour Court to deny the explanation given by the 2nd respondent. The Assistant Branch Manager Prabakaran, who was examined as M.W.1, in his evidence has admitted that it was the responsibility of Palaniappan, the Assistant Engineer to check up oil and diesel level before sending the bus for service to the public. Considering the above materials on record, the 1st respondent has held that the 2nd respondent cannot be held responsible for the charges levelled against him and set aside the order of punishment imposed on the 2nd respondent. The reason given by the 1st respondent is valid and legal.

7. For the above reason, the writ petition stands dismissed.
No costs.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer
Labour Court, Tirunelveli.

+1 CC to Mr.K.J.Sivakumar, Advocate sr 66287
+1 CC to Mr.V.Raghavachari, Advocate sr 65850.

सत्यमेव जयते

W.P.No.34557 of 2003

BP (CO)
SP (03/10/2019)

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