

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.34978 of 2004 & 33089 of 2005

W.P.No.34978 of 2004

Tamilnadu State Transport
Corporation (Salem) Ltd.,
Rep. by its Managing Director,
Salem.Petitioner

Vs

1. The Presiding Officer,
Labour Court, Salem
2. N.ManiRespondents

W.P.No.33089 of 2005

N.ManiPetitioner

Vs

1. The Presiding Officer,
Labour Court, Salem
2. Tamilnadu State Transport
Corporation (Salem) Ltd.,
Rep. by its Managing Director,
Salem.Respondents

PRAYER in W.P.No.34978 of 2004: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the 1st respondent in I.D.No.243/02 dated 05.01.2004 and quash the same.

PRAYER in W.P.No.33089 of 2005: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the Award dated 05.01.2004 passed by the 1st respondent in I.D.No.243/2002, quash that portion of the award depriving the petitioner backwages and consequently to direct the 2nd respondent to pay the petitioner backwages, award costs.

W.P.No.34978 of 2004

For Petitioner : Mrs.Rajeni Ramadoss, SC

For Respondents: R1 - Court
Mr.V.Ajay Khose
for R2

W.P.No.33089 of 2005

For Petitioner : Mr.V.Ajay Khose

For Respondents: R1 - Court
Mrs.Rajeni Ramadoss, SC
for R2

C O M M O N O R D E R

The Award of the Labour Court in I.D.No.243 of 2002 dated 05.01.2004, reinstating the Bus Driver into the services of the Tamil Nadu State Transport Corporation Limited with continuity of services and without backwages, has been challenged in these two writ petitions.

2. While the Award in I.D.No.243 of 2002 ordering reinstatement with continuity of services is under challenge in the writ petition in W.P.No.34978 of 2004 filed by the Tamil Nadu State Transport Corporation, the Bus Driver had preferred the writ petition in W.P.No.33089 of 2005, challenging the same Award denying backwages. For the sake of convenience, the parties are referred to as the Transport Corporation and the Driver.

3. The brief facts of the case is that the Driver was appointed in the Transport Corporation on 20.08.1992 and on 23.10.2001, he was allotted duty in the bus plying on Kallakurichi-Coimbatore route. According to the Transport Corporation, the Driver had received illegal gratification of a sum of Rs.10 at 14.20 hours from the conductor of a private bus namely M.K.S Travels and had left Erode bus stand, which is en route Kallakurichi-Coimbatore sector, at 14.41 hours instead of 14.32 hours, in order to favour the private bus. In connection with accepting such a bribe, he was caught by the Checking Inspector and the Security Guard on duty. Since the conduct of the Driver was considered as a serious misconduct under Clause 19(1)(e) of the standing orders of the Transport Corporation, he was issued with a charge memo dated 26.10.2001, to which an explanation was received on 30.11.2001. The domestic enquiry was conducted after following the principles of natural justice,

wherein the charges were held to be proved against the Driver. The copy of the enquiry proceedings was served on the Driver, calling for his comments thereon. Since no comments were received, a second show cause notice dated 15.01.2002 was issued to him, proposing the punishment of dismissal from services. Again, there was no explanation from the Driver and hence, by an order dated 28.01.2002, the Driver was dismissed from the services.

4. An industrial dispute was raised by the Driver before the Labour Court in I.D.No.243 of 2002, seeking for reinstatement with all benefits and the Labour Court, had held that the charges against the Driver has not been proved and thereby directed reinstatement of his services with continuity of services and other benefits, but without backwages.

5. The learned Standing Counsel for the Transport Corporation submitted that when the domestic enquiry was held in a fair and proper manner after following the principles of natural justice, the Labour Court cannot go into the question of evidence or the quantum of punishment, in view of the limited scope available to the Labour Court under Section 11-A of the Industrial Disputes Act. She would further submit that the charges against the Driver was a serious misconduct under Clause 19(1)(e) of the standing orders of the Transport Corporation and that the Driver has a previous history of 16 cases, for which punishments have been imposed against him. In view of the same, the learned Standing Counsel submitted that the reinstatement is bad in law.

6. Per contra, the learned counsel for the Bus Driver relied upon two decisions of the Hon'ble Supreme Court reported in (2008) 12 SCC 726 in the case of Mavji C.Lakum vs. Central Bank of India and (1973) 1 SCC 813 in the case of The Workmen of M/s.Firestone Tyre and Rubber Co. of India (Pvt) Ltd. vs The Management and others and submitted that there was no infirmity in the order of the Labour Court and that the Labour Court was well within its powers to re-appreciate the evidence and interfere with the punishment. The learned counsel would also submit that the previous history of 16 cases was very trivial in nature and there was no case of any illegal gratification in his service records. As such, he would submit that the original punishment of dismissal from services was not proportionate to the levelled charges. It is the further submission of the learned counsel that when the Labour Court had rightly concluded that the charges against the Driver has not been proved, there was no justification on the part of the Labour Court in denying the backwages.

7. I have given careful consideration to the submissions made by the respective counsels.

8. Section 11-A of the Industrial Disputes Act empowers the Labour Courts and Tribunals to give appropriate relief in cases of discharge or dismissal of workmen, when the Labour Court or Tribunal is satisfied that the order of dismissal was not justified or that the punishment imposed was not in conformity with the gravity of the charges. The proviso to Section 11A states that while interfering with the punishment, the Labour Court/ Tribunal shall rely only on the materials on records and shall not take any fresh evidences in the matter. The scope of Section 11-A has been explained by the Hon'ble Supreme Court in various decisions and has held that the Labour Court or the Tribunal, as the case may be, will be justified in re-appreciating the evidence or interfering with the quantum of punishment, in appropriate cases.

9. The contention of the learned Standing Counsel for the Transport Corporation that the Labour Court cannot traverse beyond the findings rendered in the domestic enquiry by re-appreciating the evidence and interfering with the punishment, is not the correct proposition of law, in view of the various decisions rendered in this regard by the Hon'ble Supreme Court. In many decisions, the proposition has been settled to the effect that the Labour Court/Industrial Tribunal will be justified in re-appreciating or interfering with the quantum of punishment, in appropriate cases. It has also been held that such powers should be exercised judicially by the Labour Courts/Industrial Tribunals and the interference would be possible, when the Tribunal/Labour Court is not satisfied with the findings in the domestic enquiry and also when the punishment is disproportionate to the charges levelled.

10. In the case of The Workmen of M/s.Firestone Tyre and Rubber Co. of India (Pvt) Ltd. vs The Management and others reported in (1973) 1 SCC 813, the Hon'ble Supreme Court held as follows:-

40. Therefore, it will-be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under section 11 A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no

misconduct is proved.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under section 11 A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may 'hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by section 11- A.

41-A. Another change, that has been effected by section 11A is the power conferred on a Tribunal to, alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accented by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the, misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under section 11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It

can, under such circumstances, award to the workman any lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by section 11- A.

11. Likewise, in the case of Mavji C.Lakum vs. Central Bank of India reported in (2008) 12 SCC 726, the following findings were rendered.

23. In this backdrop when we see unusually long judgment of the learned Single Judge, it comes out that the learned Single Judge held firstly that the Tribunal had exceeded its powers vested in it under the provisions of Section 11-A of the Industrial Disputes Act. The learned Judge, as regards, Section 11-A, after quoting the same, observed: "Though the Tribunal was equipped with the power to come to its own conclusion whether in a given case the imposition of punishment of discharge or dismissal from the service is justified. It is for that purpose that the Tribunal is authorized to go into the evidence that has been adduced before the Inquiry Officer in details and find out whether the punishment of discharge or dismissal is commensurate with the nature of charges proved against the delinquent."

So far the finding of the learned Single Judge appears to be correct. However, the whole thrust of the judgment has changed merely because the Industrial Tribunal had found the inquiry to be fair and proper. The learned Judge seems to be of the opinion that if the inquiry is held to be fair and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that is not the correct law. Even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed. That does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power under Section 11-A has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concludes

that punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical but there should be good reasons.

12. In view of the above settled proposition, the first contention of the learned Standing Counsel for the Transport Corporation, that the Labour Court ought not to have interfered with the punishment, in view of Section 11(A) of the Industrial Disputes Act, is unacceptable.

13. Insofar as the second contention of the learned counsel for the petitioner that the Driver had indulged in various misconducts and has been punished on 16 occasions is concerned, it is seen from the records that the punishments imposed on 16 earlier occasions are as follows:-

SI No.	Date	Nature of Misconduct	Punishment Imposed
1	16.03.1995	Damaged body sheet	Recovery Rs.20/-
2	13.10.1993	Damaged tyre	Recovery Rs.5/-
3	23.02.1995	Damaged tyre	Recovery Rs.10/-
4	06.05.1995	Damaged the foot board	Recovery Rs.20/-
5	20.01.1995	Damaged tyre	Recovery Rs.5/-
6	16.04.1995	Damaged tyre	Recovery Rs.5/-
7	14.12.1994	Damaged tyre	Recovery Rs.158/-
8	25.01.1996	Damaged bumper	Recovery Rs.50/-
9	08.12.1995	Fatal Accident	Reduced basic pay by 2 Stage
10	28.07.1996	Unauthorized absent day-1	Severely Warned
11	29.08.1995	Minor Accident	Warned

SI No.	Date	Nature of Misconduct	Punishment Imposed
12	28.04.1997	Damaged spring leaves	Warned
13	08.07.1997	Unauthorized absent day-1	Warned
14	16.12.1997	Minor Accident	Fined Rs.30/-
15	21.03.1998	Damaged tyre	Recovery Rs.270/-
16	16.07.2000	Damaged tyre	Recovery Rs.75/-
17	23.10.2001	Illegal gratification (W.P.No.34978 of 2004)	Dismissed

14. The nature of the misconducts referred above was never described or cited by the Transport Corporation, but a mere reference alone seems to have been made in the second show cause notice and the counter statement before the Labour Court. None of the 16 previous misconducts seem to be serious in nature and there is no previous case of illegal gratification. As a matter of fact, this Court has its own doubts as to whether the nature of misconducts in most of the previous cases could have been termed as a misconduct at all, since most of them seems to be on certain minor damages to the body/parts of the bus. While that being so, the punishment of dismissal from services imposed, after the domestic enquiry, itself could be termed as disproportionate to the charges levelled.

15. It is in these circumstances that the Labour Court had appreciated the evidences, which was well within its powers and thereby found that the charges were not proved during the course of the domestic enquiry. While that being so, there is no explanation, whatsoever in the impugned order, as to why the Labour Court felt that the Driver was not entitled for backwages, though he was entitled for reinstatement along with continuity of services and other attendant benefits. In the absence of any satisfying reasons as to why the backwages has been denied to the Driver, this Court is of the view that he would be entitled for such a benefit.

16. In the light of all the aforesaid observations, this Court is of the affirmed view that there is no infirmity in the Award of the Labour Court in re-appreciating the evidence adduced in the domestic enquiry and finding that the charges have not been proved during the course of enquiry. Likewise, in the absence of any satisfying reason as to why the backwages had

been denied to the Driver, the Driver would be entitled for the backwages also.

17. Nevertheless, though there was no major previous misconducts on the part of the Driver, there have been some misconducts which may not be proportionate to the levelled charges and by taking account of the same, this Court is of the view that if 50% of the entire backwages is ordered to be paid, the ends of the justice could be secured.

18. In the light of the foregoing reasons, the writ petition in W.P.No.34978 of 2004, preferred by Tamil Nadu State Transport Corporation Limited challenging the order of reinstatement by the Labour Court, stands dismissed. Likewise, the writ petition in W.P.No.33089 of 2005, preferred by the Driver against the denial of backwages, stands allowed and consequently, the Tamil Nadu State Transport Corporation (Salem) Limited is directed to pay 50% of the entire backwages to the Driver namely Mr.N.Mani from the date of dismissal from services till the date of Award in I.D.No.243 of 2002 on the file of the Labour Court, Salem. Such an exercise of disbursement of backwages shall be completed, within a period of 3 months from the date or receipt of a copy of this order.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

hvk
To

1. The Presiding Officer,
Labour Court, Salem
2. The Managing Director,
Tamilnadu State Transport
Corporation (Salem) Ltd.,
Salem.

+1 CC to Mr.V.Ajay Khose, Advocate sr 39434.

W.P.Nos.34978 of 2004 & 33089 of 2005

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