

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30-09-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.10869 of 2005

R.Chandramohan

.. Petitioner

vs.

1. The Management,
Tamil Nadu State Transport Corporation,
Bharathipuram,
Dharmapuri District.

2. The Presiding Officer,
Labour Court,
Salem.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the Award passed by the Presiding Officer, Labour Court, Salem in I.D.No.761 of 1998 dated 24.02.2003 and quash the same and consequently direct the first respondent to reinstate the petitioner into service with continuity of service and all attended benefits.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondent-1 : Ms.Rajeni Ramadoss.

For Respondent-2 : Labour Court

O R D E R

The Award of the Labour Court dated 24.02.2003 passed in I.D.No.761 of 1998 is under challenge in the present writ petition.

2. The writ petitioner was employed as a Conductor. While the writ petitioner was on duty on 31.03.1996, in a bus bearing Registration No.TN-29-M-0562, which was plying between Hosur and Puttaburthi, a group of passengers had got into the bus at Chokkani Bus Stop. The writ petitioner states that the Chokkani Inspector entered into the bus at that point of time and found that two lady passengers were travelled

without ticket, but the said two passengers said that they have paid Rs.17/- each to the writ petitioner and Rs.16.50 each for two luggages of silk cocoons, but the writ petitioner had not issued ticket to those two passengers.

3. When the cash bag was checked by the Inspector, an excess amount of Rs.138.75 was found. Subsequently, a charge sheet was issued to the writ petitioner on 04.04.1996 and the writ petitioner was placed under suspension. The writ petitioner submitted his reply on 19.06.1996, which was not accepted by the management and a domestic enquiry was ordered. The Enquiry Officer conducted an enquiry and submitted his findings on 11.10.1996, holding that the writ petitioner was found guilty of the charges framed against him.

4. The learned counsel for the writ petitioner states that the enquiry was not conducted in a proper manner and based on the improper enquiry, the writ petitioner was dismissed from service. The writ petitioner was not allowed to have assistance in the enquiry proceedings and for all these reasons, the writ petition is to be considered. The writ petitioner further states that the passengers, who made complaints against the writ petitioner, had not been examined during the enquiry and therefore, the writ petitioner had no opportunity to cross-examine the passengers, who made complaints against him. On this ground also the writ petition is to be considered.

5. The learned counsel appearing on behalf of the first respondent-Transport Corporation disputed the contentions of the learned counsel for the writ petitioner that even on previous occasions, the writ petitioner was punished on several times for not issuing tickets after collecting the ticket charges from the passengers.

6. The Labour Court found that the enquiry was conducted in a fair manner. The Labour Court further arrived a conclusion that the charges against the writ petitioner were proved and the proved allegations are grave in nature, more specifically, misappropriation. When the Labour Court found that the fairness of the enquiry was tested and held that it is just and proper and the opportunity was also provided to the writ petitioner-workman, there is no reason to interfere with the quantum of punishment and accordingly, confirmed the punishment and dismissed the industrial dispute.

7. The learned counsel appearing on behalf of the first respondent-Transport Corporation in support of her contention, cited a judgment of the Hon'ble Supreme Court

of India in the case of U.P.State Road Transport Corporation vs. Vinod Kumar [decided on 06.12.2007 in Civil Appeal No.5660 of 2007], wherein the similar circumstances were considered by the Supreme Court and the relevant paragraphs of the judgment, cited supra, are extgracted hereunder:-

"In the instant case, the mis-appropriation of the funds by the delinquent employee was only Rs.360.95. This Court has considered the punishment that may be awarded to the delinquent employees who mis-appropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money mis-appropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of mis-appropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka State Road Transport Corporation vs. B.S. Hullikatti (2001) 2 SCC 574 was also relied on in this judgment among others. Examination of the passengers of the vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a mis- conduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum."

8. The Supreme Court in unequivocal terms held that examination of the passengers of the vehicle

from whom the said sum was collected was also not essential. The possession of the excess sum of money on the part of the Conductor, a fact if proved, itself is a misconduct. When such an observation is made by the Supreme Court, this Court is of the opinion that the Labour Court had not committed any error or perversity.

9. As far as the examination of passengers of the vehicle are concerned, it may not be possible in all circumstances. The passengers travelled from one destination to another destination and in between that if any such illegality is occurred, then a complaint was made to the superior officials and the said complaint once recorded before the delinquent official, then it is sufficient and further examination during the course of enquiry may not be required. Only in the event of any discrepancy or other mitigating factor, then alone such aspects are to be considered and not otherwise.

10. In the present case, the writ petitioner had not raised any objections regarding the allegations. Contrarily, the writ petitioner admitted that he did not issue tickets to two of these passengers. When the writ petitioner himself admitted the allegation, there is no question of examination of passengers arose.

11. Thus, the enquiry was conducted in just and proper manner and there was no violation or otherwise. The Labour Court further held that the charges against the writ petitioner had been proved and the charges are also grave and the allegations are regarding misappropriation of funds of the first respondent-Transport Corporation.

12. Under these circumstances, this Court is of the considered opinion that there is no perversity or otherwise in respect of the Award passed by the Labour Court. Consequently, the Award of the Labour Court dated 24.02.2003 passed in I.D.No.761 of 1998 is confirmed and the writ petition stands dismissed. However, there shall be no order as to costs.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

1.The Presiding Officer,
Labour Court,
Salem.

2.The Management,
Tamil Nadu State Transport Corporation,
Bharathipuram,
Dharmapuri District.

+1 CC to Mr.N.A.Nissar Ahamed, Advocate sr 83680.

+1 CC to Mrs.S. Rajeni Ramadoss, Advocate sr 84138.

W.P.No.10869 of 2005

PM(CO)
SP(07/11/2019)



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