

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9187 of 2004
and W.P.M.P.No.10724 of 2004
W.V.M.P.No.2497 of 2005

Tamilnadu State Transport
Corporation (Kumbakonam Dn.I) Ltd.,
Kumbakonam, rep.by its
Managing DirectorPetitioner

Vs.

1.The Presiding officer,
Labour Court, Cuddalore.

K.Nannaiyan (deceased)

2.Radha

3.Minor N.Srinivasan

4.Minor N.Surandran

5.Minor N.Sarmila
(Minors Respondents 2 to 5
represented by mother and natural guardian
2nd respondent)
all are residing at J.P West Street,
3 Poongaline, Kumbakonam.

...Respondents

Prayer : 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.347/1992
dated 16.6.2003 and quash the same.

For Petitioner : Mr.D.Venkatachalam

For Respondents : R1 - Labour Court

Mr.S.Sadasivam
[For R2 to R5]

O R D E R

The Award dated 16.06.2003 passed in I.D.No.347 of 1992 is under challenge in the present writ petition.

2. The petitioner is Tamil Nadu State Transport Corporation (Kumbakonam Division I) Limited. The husband of the 2nd respondent namely Mr.K.Nannaiyan (deceased), was employed as a Conductor in the writ petitioner Corporation. A charge memo was issued against the said employee and framed the following charges:

"1. When the deceased employee was on duty as conductor in the bus route from Thanjavur to Karambakudi, he received a sum of Rs.3.05 from a lady passenger but did not issue ticket to her, which was found by the Checking Inspector.

2. He also misbehaved with the Checking Inspector as he snatched statement of lady passenger recorded by the Checking Inspector.

3. He further refused to receive defects report from the Checking Inspector."

3. The deceased employee submitted his explanation, denying the charges. Having not satisfied with the explanations, the writ petitioner Management appointed an Enquiry officer, who in turn, conducted the Domestic Enquiry. The Enquiry officer held that the charges against the deceased employee are proved. Based on the enquiry report, the Second Show Cause Notice was issued to the deceased employee on 27.07.1982 and he submitted his explanation on 12.09.1982. Thereafter, an order of dismissal from service was issued against the deceased employee on 06.10.1982. The deceased employee raised an industrial dispute in I.D.No.347 of 1992. During the pendency of the industrial dispute, the employee died on 25.01.2000 and thereafter, the legal heirs of the deceased employee pursued the remedy. The Labour Court passed an Award in I.D.No.347 of 1992 on 16.06.2003. The Labour Court set aside the order of dismissal and ordered for reinstatement with back wages including continuity of service. Challenging the said award, the writ petitioner Transport Corporation filed the present writ petition.

4. The learned counsel for the writ petitioner made a submission that the proved charges are grave in nature and this apart, the deceased employee was imposed with the punishment of suspension for one month on earlier occasion in respect of the similar charge. However, the Labour Court, without considering the past records as well as the nature of the proved charges against the deceased employee, ordered for reinstatement, which is in violation of the established principles of law.

5. The petitioner states that the Labour Court has committed an error in exercising the powers under Section 11A of the ID Act as the punishment of dismissal from service, cannot be construed as disproportionate with reference to the gravity of the proved charges against the deceased employee. Thus, the award of the Labour Court is liable to be scrapped.

6. The learned counsel appearing on behalf of the respondents 2 to 5 disputed the contentions by stating that admittedly, the charges were proved before the Enquiry officer by the Management. However, the allegation was that the deceased employee failed to issue a ticket to one passenger and the cost of the ticket amount was Rs.3.05/-. The incident was a stray one and based on such an incident, the major penalty cannot be imposed. The imposition of major penalty of dismissal from service in respect of such allegations are disproportionate and therefore, there is no infirmity as such in respect of the Award passed by the Labour Court.

7. The learned counsel for the respondents 2 to 5 reiterated by stating that the deceased employee died in the year 2000 and now, the legal heirs are pursuing the remedy on account of the fact that the deceased employee served for a considerable length of time and therefore, the legal heirs are entitled for the monetary benefits due to the deceased employee as per the Award of the Labour Court.

8. The charge against the deceased employee was that he had collected a sum of Rs.3.05/- from one passenger and did not issue the ticket and further misappropriated the said amount of Rs.3.05/-. It is admitted by the writ petitioners that more than 25 passengers were traveling in the particular bus and the deceased employee had not issued ticket for only one passenger alone. Thus, the incident to be considered as stray incident, where it may not be possible to know whether the intention of the deceased employee was to misappropriate the amount or the omission occurred on account of certain mistakes or inadvertently. All these factors were not adjudicated by the Enquiry officer. The disciplinary authority also had not considered such mitigating factors and imposed the major penalty of dismissal from service. Undoubtedly, the allegation of misappropriation is a serious misconduct, warranting a major penalty. No leniency can be shown in respect of the allegations of misappropriation specifically with reference to the funds of the Transport Corporation. The charge against the deceased employee that he had not issued ticket to the passenger concerned was proved. However, the fact remains that he issued ticket to all the passengers in the bus except one passenger, which creates a doubt in the mind of the Court that whether it

was a mistake or with an intention. It is possible that such incidents may happen by mistake. The benefit of the doubt should go to the employee as the major penalty of dismissal from service will affect the entire livelihood. Thus, the nature of the charges, the facts, circumstances as well as the proportionality are to be considered by this Court. The Labour Court made a finding that the incident was a mistake and as per the invoice of the 25 passengers were travelling in that bus. Considering the documents filed before the Labour Court, the Labour Court arrived a conclusion that the charges against the deceased employee was not proved. Accordingly, the Award was passed, ordering for reinstatement with full back wages.

9. This Court is of the considered opinion that there is no infirmity as such in respect of the findings as the deceased employee had issued tickets to all the passengers except one passenger. Even as per the invoice, he issued tickets to 25 passengers, which was admitted by the writ petitioner Corporation also. However, the contention of the writ petitioner is that the ticket was not issued to the 26th person alone. Under these circumstances, the Labour Court arrived a conclusion that there was a mistake on the part of the deceased employee in preparing the invoice and the same cannot be considered as a grave misconduct.

10. This being the facts and circumstances considered by the Labour Court, this Court cannot draw any inference with reference to the facts before the Labour Court. Under these circumstances, this Court is not inclined to interfere with the Award of the Labour Court. However, the fact remains that the charges against the deceased employee was proved and grave in nature. The past records of the deceased employee was not considered by the Labour Court. Earlier, the writ petitioner Management imposed the punishment of suspension from service for one month and the allegation on earlier occasion was also that he received the ticket cost and not issued the ticket to the passenger. Thus, the previous misconduct committed by the deceased employee was also similar to that of the charges framed in the present case. The learned counsel for the writ petitioners also reiterated that the deceased employee was having the habit of collecting money and had not issued ticket on several occasions and the previous conduct was not taken into account by the Labour Court.

11. Under these circumstances, this Court is of an opinion that the Award regarding the reinstatement, cannot be granted as the employee passed away. As far as the grant of back wages and other terminal and pensionary benefits are concerned, this Court is of an opinion that the legal heirs are entitled for the same and in respect of back wages, this Court is inclined to grant

25% of the back wages. The amount of back wages are reduced on account of the fact that the previous history of the deceased employee was not considered by the Labour Court. This apart, the deceased employee had served for about 10 years and therefore, awarding of 100% back wages in respect of the misconduct is not proper. It is brought to the notice of this Court that the Transport Corporation are running in huge monetary loss.

12. Accordingly, the Award of the Labour Court dated 16.06.2003 passed in I.D.No.347 of 1992 is modified as follows:

(1) The respondents 2 to 5 are entitled to get 25% of the back wages and also the statutory benefits as per the service rules applicable to the deceased employee. The statutory benefits and other benefits as applicable, is directed to be disbursed within a period of 12 weeks from the date of receipt of a copy of this order.

13. With this modification, the writ petition stands partly-allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Kak

31.10.2019

This matter having been listed under Caption for "Being Mentioned" on 11/12/2019 pursuant to the order of this Court dated 31/10/2019 and made herein in the presence of the aforesaid Counsels on the either side the court made the following order;

When the matter is listed under the caption "For Being Mentioned" today, the learned counsel appearing on behalf of the petitioner/Transport Corporation brought to the notice of this Court that the award amount of Rs.1,32,201/- has already been deposited before the Labour Court in I.D.No.347 of 1992 and the said amount has not been withdrawn.

2. In view of the submissions made, Paragraph 12 is to be read as follows:

"12. Accordingly, the Award of the Labour Court dated 16.06.2003 passed in I.D.No.347 of 1992 is modified as follows:

(1) The respondents 2 to 5 are entitled to get 25% of the back wages and also the statutory benefits as per the service rules applicable to the deceased employee. The statutory benefits and other benefits as applicable, is directed to be disbursed within a

period of 12 weeks from the date of receipt of a copy of this order.

(2) The respondents 2 to 5 are permitted to withdraw the 25% of the deposited amount with accrued interest proportionately by filing an application and the Labour Court is directed to pay the said amount within a period of 4 weeks from the date of receipt of application from the respondents. The balance amount deposited is directed to be repaid to the petitioner / Transport Corporation with accrued interest."

mrm

1/12/2019

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Presiding officer,
Labour Court, Cuddalore.

+2cc to Mr.D.Venkatachalam, Advocate Sr.103438, 90283
+2cc to Mr.S.Sadasivan, Advocate Sr.103282, 90246

W.P.No.9187 of 2004

ssd[co]
srg 03/02/2020

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