

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.12.2018
Pronounced on : 07.06.2019

CORAM:

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.Nos.21224 & 18855 of 2013
and
WMP.No.1 of 2013 in WP.No.21224 of 2013

1. The General Manager,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
Villupuram - 605 002. (Petitioner in WP.No.21224 of 2013)
 2. A. Venkatesaperumal,
Conductor Serial No.2764,
S/o.Ayyasamy, No.17/40,
Gandhi Road, Kallakurichi.
Villupuram District.
(Petitioner in WP.No.18855 of 2013)
- Vs-
1. Special Joint Commissioner of Labour Chennai,
D.M.S.Compound, Chennai - 06.
 2. Thiru Venkatesaperumal,
Conductor Serial No.276,
S/o.Anthonisamy, No.17/40,
Gandhi Road, Kallakurichi.
(Respondents in WP.No.21224 of 2013)
 3. The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
Division-I, Villupuram - 605 002.

Prayer in WP.No.21224 of 2013:

Writ Petitions has been filed Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records of the 1st respondent made in Approval Petition No.52 of 2011 in C/37589/07, dated 27.12.2012 and to quash the same as illegal and against the provisions of the Industrial Disputes Act,1947.

Prayer in WP.No.18855 of 2013:

Writ Petitions has been filed Article 226 of the Constitution of India seeking a Writ of Mandamus, directing the respondent to consider and dispose the petitioner representation dated 06.05.2013 to issue orders of reinstatement with continuity of service and other benefits applicable to the petitioner as per orders passed by the Deputy Commissioner of Labour (Conciliation), Thenampet, Chennai in Approval Petition No.52 of 2011, dated 27.12.2012, within a time frame.

Writ Petition.No.21224 of 2013

For Petitioner : Mrs.S.Rajeni Ramadoss
For Respondents : Mr.B.Anand, Govt. Advocate
for R1
Mr.S.T.Varadarajulu for R2

Writ Petition.No.18855 of 2013

For Petitioner : Mr.S.T.Varadarajulu
For Respondent : Mrs.S.Rajeni Ramadoss

COMMON ORDER

Two writ petitions in WP.No.21224 of 2013 and WP.No.18855 of 2013 are being disposed of by this common order.

2. Writ petition No.21224 of 2013 has been filed by the General Manager, Tamil Nadu State Transport Corporation, (Villupuram Limit), calling for the records of Special Joint Commissioner of Labour, Chennai, D.M.S.Compound, Chennai, in Approval Petition No.52 of 2011, in C/37589/07, dated 27.12.2012, by which the Special Joint Commissioner of Labour, Chennai has dismissed the Approval Petition No.52 of 2011, filed by the petitioner in WP.No.21224 of 2013 and quash the order dated 27.12.2012. Writ petitioner in WP.No.18855 of 2013, who is respondent No.2, in WP.No.21224 of 2013, has filed the writ petition for a direction to the writ petitioner in WP.No.21224 of 2013, to issue orders of reinstatement with continuity of service and other benefits applicable to the petitioner as per orders passed by the Deputy Commissioner of Labour (Conciliation), Thenampet, Chennai in Approval Petition No.52 of 2011, dated 27.12.2012.

3. The Tamil Nadu State Transport Corporation, hereinafter referred as petitioner and Mr.A.Venkatesaperumal, is hereinafter referred to as respondent.

4. The respondent joined the service of the petitioner as a Conductor. His services were regularized in August 1993. On 01.08.2010, when he was assigned duty on a bus, in the route Villupuram to Chennai, a surprise check was made at Perungalattur, wherein, it was found that the respondent had received a sum of Rs.52/- from a passenger, but he has issued a ticket only for Rs.45/- and misappropriated the balance amount. It was also found that the respondent had not issued ticket for passengers for a sum of Rs.23/-.

5. Charge memo was issued to the respondent on 13.08.2010. Since the reply given by the respondent was not satisfactory, an Enquiry Officer was appointed. The Enquiry Officer directed the respondent No.2 to appear for the enquiry. On 30.08.2010, the respondent did not appear. Second notice dated 09.09.2010 was sent to respondent to appear for the enquiry to be conducted on 20.09.2010. Since the respondent did not appear for the enquiry, another notice dated 29.09.2010, was sent to the respondent to appear for the enquiry to be held on 11.10.2010. Since the respondent did not appear again on 11.10.2010, the case was kept in the afternoon and the Enquiry Officer waited for his appearance. Since the respondent did not appear for the enquiry, the Enquiry Officer proceeded the Ex-parte. The enquiry was completed on very same date, i.e., 11.10.2010 and the charges were held to be proved.

6. A copy of the enquiry report was sent to the respondent seeking for an explanation from him. Explanation was sent by the respondent stating that, new facts have been alleged in the notice and he sought for explanation for seven days. It is stated by the petitioner management that, since there was no reply from the 2nd respondent, the management taking into consideration the facts of his letter and the acceptance of the findings of the Enquiry Officer, 2nd show-cause notice was issued calling the 2nd respondent to file his reply.

7. According to the management, the reply sent was not convincing, and the services of the respondent was terminated by an order dated 04.02.2011, on payment of one month salary in lieu of one month notice.

8. Since an industrial dispute was also pending before the Special Joint Commissioner of Labour, Chennai, an Approval Petition in AP.No.52 of 2011, was filed by the petitioner for confirming the order of dismissal. The Special Joint Commissioner of Labour, Chennai, vide order dated 27.12.2012, framed the following issues:-

"1. Whether the employee was paid one month's salary or not?

2. Whether the petitioner has filed the approval petition for the decision taken as the part of the proceedings taken against the labour or within a short time?

3. Whether the domestic enquiry is conducted as per law and as per principles of natural justice?

4. Whether the prima facie case has been proved as per the evidence submitted during the domestic enquiry or not?

5. Whether the action of dismissal from the service taken against the respondent by the petitioner is really as per the conclusion on the basis that the employee is an offender and not for taking any revenge against the labour?"

9. The Special Joint Commissioner of Labour, Chennai, found that, one month salary to be given to the respondent herein, Section 33(2)(b) of the Industrial Dispute Act, had been complied with. It was also found that the Approval Petition has been filed within time. It was observed that there was no victimization of the respondent. However, the Special Joint Commissioner of Labour, Chennai, found that, the enquiry has not been conducted in accordance with the principles of natural justice.

10. The Special Joint Commissioner Labour found that, the respondent by his letter dated 26.08.2010, had requested for copies of the defect report against him, statements of the passengers and report prepared after checking the cash bag, and they were not given to him.

11. The Special Joint Commissioner of Labour, Chennai, found that, without giving him proper material, the enquiry was simply adjourned to 11.10.2010. The Special Joint Commissioner of Labour, Chennai, found that, despite letter dated 26.08.2010, by the respondent seeking further time to file reply to the charges made against him and for the documents, the petitioner management did not sent any reply and simply postponed the date of enquiry to 11.10.2010, on which day the enquiry was completed, which is against the principles of natural justice.

12. The Special Joint Commissioner of Labour, Chennai, therefore found that the enquiry has been conducted in violation of the principle of natural justice, in as much as sufficient opportunity had not been given to the respondent No.2 to defend his case. The Special Joint Commissioner of Labour, Chennai, also found that the findings of guilt by the Enquiry Officer was without any material. The Special Joint Commissioner of Labour, Chennai, authority observed as :-

"The prima facie charge is that when the

respondent was working in the bus having no. TN 32 N 3295 and when the checking officials conducted the checking at the place at Perungalathur the respondent has received the ticket fare for Rs.52/- from the passenger going from Villupuram to Chennai and has issued the ticket for Rs.45/- and has appropriated Rs.6.50/- for himself and that he left out without issuing the ticket for Rs.26/- and when his cash bag was verified there was deficit of Rs.18.50/- than the collection amount. The reports submitted by the checking officials have been taken as proof on the management side and has examined the witnesses also. But nobody was examined on the side of the delinquent offender. Further the statement received from the passengers alone were submitted as proofs. But the concerned passengers were not included as witnesses in the proceedings. Therefore it cannot be considered that the prima facie case has been proved as per the evidence submitted during the domestic enquiry."

13. The Approval Petition was therefore dismissed on the ground that the principle of natural justice had not been followed and that the petitioner management has failed to prove the case.

14. The Transport Corporation has filed instant writ petition challenging the order dated 27.12.2012, passed by the Special Joint Commissioner of Labour, Chennai, in Approval Petition No.52 of 2011, and the respondent has filed a Writ Petition No.18855 of 2013, for implementation of the order dated 27.12.2012.

15. Heard the counsel for the parties.

16. The learned counsel appearing on behalf of the Transport Corporation vehemently contended that, the Special Joint Commissioner of Labour Court had found that,

a) one month salary which has to be paid to the writ petitioner herein Section 33(2)(b) of the Industrial Dispute Act 1947, has been given.

b) It had also found that the Approval Petition had been filed by the Management within a reasonable period of time.

c) There was no bias against the respondent on the part of the petitioner and the order of dismissal has not been passed for taking any revenge.

17. The learned counsel for the Transport Corporation contend that, once the Transport Corporation had found all these points in favour of the management, then it ought not to have dismissed the Approval Petition. The learned counsel for the

Transport Corporation contend that, there is no violation of principles of natural justice. The learned counsel would contend that despite opportunities, respondent 2 did not appear for the enquiry proceedings and he only gave letters seeking documents. It was also submitted that, it was for the respondent to come before the proceedings and satisfy as to why these documents were required and as to how the workman would be prejudiced if the documents sought for are not given to him.

18. The learned counsel for the Transport Corporation would also contend that, the Labour Court ought not to have interfered with the findings of the Enquiry Officer. The counsel contended that, the evidences led by the management witnesses were cogent. The Labour Court was not correct in disbelieving the management witnesses, just because the management did not produce independent witness.

19. Per Contra, the learned counsel for the respondent stated that the 2nd show-cause notice very categorically states that, the respondent 2 was set ex-parte on 08.10.2010, instead of 11.10.2010, the day on which the enquiry was held. He was also said that the documents which were necessary to effectively contest the case has not been given to respondent 2 and instead of giving those documents, the respondent 2 was set ex-parte and proceedings were held behind the back of the respondent 2 and therefore, the enquiry proceedings does not confirm to the principles of natural justice. The learned counsel also stated that, in the absence of any independent witness, the evidence, management witnesses alone cannot be considered.

20. Heard the counsel for the parties and perused the documents. When the learned counsel for the respondent pointed out that the show-cause notice states that the respondent 2 was set ex-parte on 08.10.2010 whereas, the hearing was held only on 11.10.2010, the counsel for the management was directed to produce the proceedings before Enquiry Officer. The proceedings before the Enquiry Officer reads as under:-

"ENQUIRY OFFICER PROCEEDING

ENQUIRY DATE:30.08.2010

On 30.08.2010 domestic enquiry has been conducted against the Charges framed in Charge Memo Ka.Ku.No.662/7172/D4/10-01 dated 13.08.2010.

Enquiry Officer: A.Vetriselvan, M.Com., M.L.,
Management Witness Thiru.S.EswaraMoorthy, TI, 13245 and
Thiru.R.Murugan, Sr.CI 13556 are present.

Workman Requested to postpone the enquiry. Considered and recorded admitted. Notice to be sent for enquiry on 20.09.2010.

Management side witness present.

Workman side witness Not present.

Domestic Enquiry postpone to 20.09.2010 send Notice.

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

Sd/-
Enquiry Officer

ENQUIRY OFFICER PROCEEDING

ENQUIRY DATE:20.09.2010

On 30.08.2010 domestic enquiry has been conducted against the Charges framed in Charge Memo Ka.Ku.No.662/7172/D4/10-01 dated 13.08.2010.

Enquiry Officer: A.Vetriselvan, M.Com., M.L.,
Management Witness Thiru.S.EswaraMoorthy, TI, 13245 is present.

Workman Requested to postpone the enquiry. Considered and recorded admitted. Notice to be sent for enquiry on 11.10.2010.

Management side witness present.

Workman side witness Not present.

Domestic Enquiry postpone to 11.10.2010 send Notice.

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

Sd/-
Enquiry Officer

ENQUIRY OFFICER PROCEEDING

ENQUIRY DATE:11.10.2010

On 30.08.2010 domestic enquiry has been conducted against the Charges framed in Charge Memo Ka.Ku.No.662/7172/D4/10-01 dated 13.08.2010.

Enquiry Officer: A.Vetriselvan, M.Com., M.L.,
Management Witness Thiru.S.EswaraMoorthy, TI, 13245 is present.

Workman Requested to postpone the enquiry. Considered and recorded admitted. Notice to be sent for enquiry on 20.09.2010.

Management side witness present.

Workman side witness Not present.

Domestic Enquiry adjourned to (11/10/2010) afternoon send Notice.

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

Sd/-
Enquiry Officer

Enquiry
On 11.10.2010 domestic enquiry has been conducted against Thiru.A.Venkatasaperual, CR2764 for Charges framed in Charge Ka.Ku.No.662/7172/D4/TNSTC (V).

Sd/-
Enquiry Officer

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

In Domestic Enquiry the Management Witness Thiru. S.Eswaramoorthy, TI 13245 (Villupuram Corpt) (Kanchipuram Region) attended the hearing. The delinquent employee not attended the hearing.

Sd/-
Enquiry Officer

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

To the above delinquent an enquiry notice dated 24.08.2010 by fixing the enquiry date on 30.08.2010 has been sent. The request letter of the delinquent dated 26.08.2010 has been received on 27.08.2010 wherein he requested to adjourn the enquiry for another 15 days.

Letter by dated 27.08.2010 was sent to the delinquent to admit to receive the copy of the reports which was received by him on 28/08/2010.

The copy of the reports and reply for certain quires

regarding enquiry has been sent to the delinquent through RPAD by even letter number dated 06.09.2010.

Sd/-
Enquiry Officer

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

Notice of an enquiry dated 09/09/2010 for enquiry on 20.09.2010 has been sent on 13.09.2010 by RPAD
sd/-

Enquiry Officer

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

The delinquent has been requested further time for 10 days by letter dated 16/09/2010 (received by this office on 22/09/2010).

Sd/-
Enquiry Officer

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

Enquiry Notice dated 29/09/2010 by fixing enquiry on 11/10/2010 has been sent through RPAD on 30/09/2010.

Sd/-
Enquiry Officer

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

Notice has been sent regarding enquiry on 30/08/2010, 20/09/2010 and 11/10/2010 to the delinquent.

sd/-
Enquiry Officer

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

Enquiry adjourned to afternoon.
sd/-

Enquiry Officer

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness

The delinquent not appeared in the enquiry Thiru.S.Eswaramoorthy, TI attended the enquiry, Enquiry proceeded. The workman Thiru.A.Venkatasaperumal, CR2764 declared as exparte and recorded the same.

Sd/-
Enquiry Officer

Sd/-
S.Eswaramoorthy, TI 13245
Management Witness"

21. The learned counsel for the Transport Corporation was also filed an affidavit stating the date 08.10.2010, mentioned in the 2nd show-cause notice is only a mistake and the respondent was set ex-parte only on 11.10.2010. It is seen from the proceedings that the respondent, did not appear before the Enquiry Officer, instead, he only sent letter seeking postponement of enquiry on the ground of documents. Merely sending letter to the Enquiry Officer cannot mean that the Enquiry Officer is bound to adjourn the proceedings. It is for the workman to appear before the Enquiry Officer and make out a case how the documents are necessary for him to conduct the case. The respondent has been served. He did not participate in the enquiry. The respondent was not set ex-parte on 08.10.2010, as contended by the counsel for the respondent. He was set ex-parte only on 11.10.2010. The Enquiry Officer cannot be found fault with for setting the respondent ex-parte on 11.10.2010, and no fault can be found with the Enquiry Officer.

22. However, one cannot ignore that the defect report given against respondent No.2 and statement letter of passengers and the details of checking of cash bag of the conductor as mentioned in the enclosures in the complaint has not been given to the respondent No.2. It cannot be said that, these documents are not necessary for the respondent to defend himself. The respondent did not appear before the enquiry proceedings, but nevertheless he was entitled to get all these documents. The enquiry report also does not state that, these documents are not necessary for the respondent, to prepare his defence. There is no material also to show that the Enquiry Officer has applied his mind to the request made by the respondent, as to whether these documents are necessary to be supplied to the respondent.

23. In view of the fact that, these documents have not been supplied to the respondent, the principles of natural justice have not been followed properly.

24. The Labour Court held that the Corporation has not proved the charges against the petitioner because of two reasons,

- a) No witnesses have examined on the side of delinquent.
- b) The statement received from the passengers alone were submitted as proof, but the passengers were not included as witnesses in the proceedings.

25. With great respect to the Labour Court, this cannot be sufficient to conclude, that the management has not established its case. It is settled law that, the Evidence Act is not applicable to domestic enquiries. The delinquent did not appear before the authorities on the date fixed for the enquiry. He did not produce any witnesses and did not cross examine the witnesses of the petitioner. Merely writing a letter is not sufficient to dispense with his presence in the proceedings. Further in the present case, it is difficult for the Corporation to produce passengers as witnesses in enquiry proceedings. Absence of independent witnesses does not mean the entire case is false, especially when the Labour Court has itself found that the enquiry proceedings were not initiated, only to take any revenge against the respondent 2. The documents of the passengers were marked and proved by the management witnesses, who have not been cross-examined.

26. The finding of the Labour Court is that the management has not proved their case is not sustainable and set aside. The other findings of the Labour Court namely,

- a) One month salary has been given in compliance of the statutory provisions and
- b) when the Approval Petition has been filed within a reasonable time.

These findings do not require any interference in the absence of any appeal challenging these findings.

27. In view of the fact that documents were not provided to the respondent to meet his case, this Court is inclined to remand the matter back to the Enquiry Officer for reconsideration of the case and further direct the Transport Corporation to give the documents sought for by the respondent 2. The enquiry proceedings should be completed within a period of 6 weeks from the date of receipt of a copy of this order. The order of Labour Court and the order of dismissal, both are set aside and the matter is remanded back to the Enquiry Officer for a fresh proceeding, after the documents sought for by the respondent 2, are given to him. In view of the fact that the workman has not worked, he will not be entitled for any back wages.

28. Accordingly, both the writ petitions are disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Joint Commissioner of Labour Chennai,
D.M.S.Compound, Chennai - 06.
2. The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
Division-I, Villupuram - 605 002.
3. The Deputy Commissioner,
of Labour (Conciliation),
Teynampet, Chennai.

+1cc to Mr.S.T.Varadarajulu, Advocate, SR.No.45946

WP.Nos.21224 & 18855 of 2013

Kak(11/07/2019)

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