

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.10.2019

CORAM

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

W.P.No.10602 of 2018
and
W.M.P.No.12566 of 2018

M/s.Tamil Nadu State Transport Corporation,
(Salem Limited),
12, Ramakrishna Road,
Salem 636 007.

..Petitioner

Vs.

1.S.Gandhi
2.The Special Deputy Commissioner of Labour,
Chennai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue the Writ of Certiorari, calling for the records relating to the Order dated 28.03.2017 passed by the Second respondent in A.P.No.258 of 2014 and to quash the same.

For Petitioner : Mr.S.Rajeni Ramadas
For R1 : Mr.T.Pichappa
For R2 : Mr.J.Ramesh
Additional Government Pleader

O R D E R

The order dated 28.03.2017, passed by the second respondent in A.P.No.258 of 2014 is sought to be quashed in the present writ petition.

2. The learned counsel appearing for the writ petitioner/Corporation states that the first respondent was working as conductor with the petitioner on 29.09.2013, while conducting in the bus bearing No.TN-29-N-2086, the first respondent collected a sum of Rs.81/- from nine passengers but did not issue tickets to them and it was also found that a sum of Rs.5/- was less in the cash book. In respect of the misconduct, the writ petitioner/Management issued a charge Memo dated 10.10.2013 through branch office and the first respondent/workman received the same on 17.10.2013. He had submitted his explanation on 31.10.2013 to the charge Memo. However, the explanations were not found to be satisfactory by the Management and the domestic enquiry was ordered. The domestic enquiry was conducted and the opportunity to defend the case was also provided to the first respondent/workman.

The Enquiry Officer submitted his report on 25.01.2014 and the charges against the first respondent were held proved. Based on the proved charges, the second show cause notice was issued and consequently, the punishment of dismissal from service was imposed on 18.10.2014. It is contended that the one month salary was also sent to the first respondent on the same date and thereafter, the writ petitioner/ Management filed an application for approval of the said order immediately.

3. The learned counsel for the writ petitioner states that the second respondent held all the three points, which all are to be decided in an Approval Petition in favour of the writ petitioner/Management and in respect of the fourth point, the second respondent has taken a decision that there was a delay in filing the Approval Petition. In this regard, it is contended that the order of dismissal was issued on 18.10.2014 and the Approval Petition was filed on 24.10.2014 and in between, there was a holiday for two days. Thus, the Approval Petition was filed within a reasonable period of time and there was no delay or otherwise.

4. The learned counsel appearing for the writ petitioner further states that in respect of the payment of one month salary, the same was calculated by the Management as Rs.21,088/- and the said amount of salary was not disputed by the first respondent/workman, even in the counter filed in the Approval Petition. The workman had not disputed the salary and under those circumstances, the second respondent arrived a conclusion that the Management has not filed any proof to establish that the salary of Rs.21,088/- was the actual salary of the first respondent/workman. In this regard, the workman also filed an application under the RTI Act, seeking particulars of his salary during the relevant point of time in the year 2014 and the reply furnished in this regard by the writ petitioner/Management reveals that salary during the year 2014 to the first respondent/workman was Rs.21,088/-. Thus, there is no discrepancy in respect of the one month salary to be paid. However, the second respondent held that the Management has not established by way of proof, which may not be required as the salary account had not been disputed by the workman himself.

5. The first respondent contested the Approval Petition by stating that the charge itself is untenable and based on the false set of facts, the charge memo was issued. The Checking Inspector had not examined passengers during the relevant point of time and the witnesses were also not examined during the Domestic Enquiry. The passengers were not examined during the Enquiry Proceedings. This apart, it is stated that enquiry proceedings were not conducted in compliance with the principles of natural justice. Therefore, the order of dismissal is to be scrapped.

6. This Court is of the considered opinion that the second respondent categorically found that the Domestic Enquiry was conducted in accordance with the procedures contemplated and in compliance with the principles of natural justice. In respect of the second point also the second respondent held in favour of the Management by holding that there was a prima facie case and the evidence was also available and based on the evidence, the case was proceeded with. There is no material to arrive a conclusion that there was a victimization only in respect of the one month salary. It is stated that the Management has not established an amount of salary to be paid by submitting other documents.

7. This Court is of an opinion that the writ petitioner is State Transport Corporation and the first respondent/workman had not raised any dispute in respect of the one month salary paid to him. Even in the counter filed in the Approval Petition, the first respondent/workman had not raised any dispute regarding the payment of salary made by the Competent Authorities. In the absence of any such dispute, the Second respondent has unnecessarily arrived a conclusion that the Management has not established one month salary even subsequently, on the application filed by the first respondent under the RTI Act. The reply was furnished stating that the salary of the first respondent during the relevant point of time was Rs.21,088/-.

8. This being the factum, the second respondent has erroneously made a finding that the writ petitioner/Management has not established one month salary to be paid. The delay in filing the Approval Petition is also not properly dealt with, as there is no any reasonable delay or otherwise on the part of the Management in filing the Approval Petition. The Approval Petition filed within a reasonable period of time. This being the factum, the allegations of proved misconduct cannot be dealt otherwise.

9. The previous history was also placed before this Court. Regarding the earlier misconducts committed by the first respondent and the details of the previous history, are extracted here under:

1.	11.06.1986	Absent	App period extended for three months
2.	22.01.1987	Absent	Ipp for three months w.o.e.e
3.	25.04.1988	Absent	Fined Rs.10/-
4.	14.03.1988	Absent	Treated as specific punishment
5.	10.06.1988	F.N.C	Warned Fined Rs.10/-

1.	11.06.1986	Absent	App period extended for three months
6.	10.10.1988	Not Stopped at pusaripatty	Warned Fined Rs.5/-

7.	14.08.1989	Not adhered the timing	Warned
9.	08.09.1994	Shortage in cash bag	Warned
10.	11.09.1994	Luggage F.N.C	Fined Rs.25/-
11.	19.07.1995	Misbehavior with Conductor	Ipp for two Years w.c.e
12.	09.07.1995	Misbehavior	Ipp for 18 Months W.ec.e
13.	01.07.1997	Absent	Fined 20/-
14.	24.04.1997	Shortage Rs.104.85/-	Treated as specific punishment
15.	07.12.1997	Shortage Rs.137/-	Fined Rs.95/-
16.	22.01.1998	Luggage F.N.C	Severely Warned
17.	20.01.1999	Excess in Cash Bag & IFC	Ipp for six Months W.c.e
18.	10.12.2002	Absent	Ipp for one year W.o.c.e
19.	14.06.2000	Less Luggage Fare Collected	Fined Rs.20/-
20.	31.05.2001	Late Arrival	Fined Rs.20/-
21.	04.07.2002	Absent	Fined Rs.20/-
22.	11.10.2000	FC-2 Shortage Rs.28.50/-	Reduced Basic Pay by Starting 5 Stage
23.	08.11.1994	Fail to pickup passenger	Warned
24.	22.09.1986	Absent	Fined Rs.15/-
25.	31.10.2010	Fail to check return tickets	Advised
26.	28.01.2011	Absent	Ipp for three Months W.o.c.e
27.	28.11.2010	Absent	Ipp for six months W.c.e
28.	09.05.2011	Less Remittances	Ipp for three Months W.o.c.e Rec.Rs.300/-

29.	01.06.2011	Absent	Ipp for two years W.c.e
30.	22.05.2012	Absent	Dismissed
31.	24.11.1997	Absent	Regularization postponed for six months

10. In view of the facts and circumstances of the case, this Court is of the opinion that the order passed by the second respondent is perverse and not in consonance with the established principles of law.

11. Accordingly, order dated 28.03.2017 passed by the second respondent in A.P.No.258 of 2014 is quashed and the writ petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

dua/pns

To

The Special Deputy Commissioner of Labour,
Chennai.

+1 CC to Mrs.S. Rajeni Ramadass, Advocate sr 88313.

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W.P.No.10602 of 2018

and

W.M.P.No.12566 of 2018

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