

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.35135 of 2013

and M.P.No.1 of 2014

The General Manager,
State Express Transport Corporation Tamil Nadu Ltd.,
Pallavan Salai, Chennai-600 002. ... Petitioner

-vs-

1.The Special Deputy Commissioner of Labour,
Teynampet, Chennai-600 006.

2.K.Pounraj Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in order dated 27.12.2012 in A.P.No.57 of 2010 in C/37589/07 on the file of the Special Deputy Commissioner of Labour, Teynampet, Chennai and to quash the same.

For Petitioner : Mr.R.P.Prathap Singh

For R1 : No Appearance

For R2 : Mrs.D.Geetha

O R D E R

The Petitioner / Management has come forward with the present Writ Petition, challenging the order of the Authority passed under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947'), rejecting the Approval Petition in A.P.No.57 of 2010 on 27.12.2012.

2. For the sake of brevity, the parties would be referred to by their original nomenclature in the Order dated 27.12.2012 as 'the Management' and 'the Workman' and the facts are also being taken from the said Order.

3. From the facts pleaded therein, it is seen that the Workman, who was a Conductor in the bus Route No.626 proceeding from Coimbatore to Tirunelveli, had issued tickets for Rs.153/- as Rs.100/- + Rs.3/- and out of the said amount, the ticket for Rs.3/- was issued in the previous day and the same was utilized

again for Coimbatore to Tirunelveli trip. On account of misconduct, the Workman was dismissed from service after following usual formalities, like issuance of charge memo, etc. Subsequently, the Approval Petition filed by the Management was rejected by the 1st Respondent / Authority, on the ground that even though the dismissal order dated 10.06.2010 was issued to the Workman, which has been duly filed before the 1st Respondent on 11.06.2010, there is no evidence to the effect that the same was communicated to the Workman. The 1st Respondent / Authority had held that the domestic enquiry has been conducted in violation of the principles of natural justice and also held that there is an evidence of victimization.

4. In support of her above verdict, the 1st Respondent has given a reason that there is no direct evidence to establish the charges. However, the Hon'ble Supreme Court in the case of J.D.Jain vs. The Management of State Bank of India, reported in 1982 AIR 673, had categorically held that hearsay evidence is an admissible evidence in the departmental enquiry being conducted against an employee. For better appreciation, the decision of the Hon'ble Supreme Court in the said case (supra) is extracted hereunder:

"In the instant case, the Tribunal after having made a detailed reference to the evidence of the witnesses found that a complaint was made by Kansal and that the appellant confessed that he had altered the debit authority, but held That as Kansal was not examined, this was not direct evidence but was of the nature of 'hearsay' evidence, with regard to the fact whether the appellant manipulated the documents, withdrew the excess amount and misappropriated it, there is no direct evidence of any of the witnesses except the appellant's confession. The evidence on which reliance has been taken by the respondent is the confession and circumstantial evidence. The evidence of Kansal would have been primary and material. if the fact in issue were whether Kansal authorised the appellant to make the alterations in the authority letter. But Kansal's complaint was to the contrary. No rule of law enjoins that a complaint has to be in writing as insisted by the Tribunal. For the purpose of a departmental enquiry, complaint substantiated by circumstantial evidence is enough. What the respondent sought to establish in the domestic enquiry was that Kansal had made a verbal complaint with regard to the withdrawal of excess money by the appellant. On the factum of complaint of Kansal the evidence of these four witnesses is direct as the complaint is said to have been made by Kansal in their presence and

hearing. It is not therefore 'hearsay'. The respondent has succeeded in proving that a complaint was made by Kansal on the evidence of these four witnesses."

Hence, to that extent, the order of the 1st Respondent is bad.

5. Insofar as the finding that there is a violation of principles of natural justice, is concerned, the Management, without producing certain documents sought for by the Workman vide Ex.A4, had conducted the domestic enquiry and therefore, the finding rendered to that effect is perfectly valid and needs no interference by this Court. It was also observed by the 1st Respondent that there is no iota of evidence as to whether the dismissal order has been dispatched to the workman or not. Since, the Authority has rendered a finding of facts based on the materials placed before him, it does not require any interference by this Court and the Writ Petition is liable to be dismissed.

6. It is appropriate to state here that once an Approval Petition filed by the Management is rejected by the Authority, then it has to be construed that the Workman is deemed to be in service, as if there is no order of dismissal, as per the principle laid down by this Court in the case of Tata Iron and Steel Company Ltd., Vs. G.Ramakrishna Ayyar and Another reported in 1950 LLJ 1043 Madras High Court.

7. At this juncture, it is represented by Mrs.D.Geetha, learned counsel appearing for the Workman has stated that in order to give quietus to the entire issue, the Workman is willing to give up 50% of backwages and she has also filed an affidavit of undertaking dated 28.08.2019 to that effect. For the sake of brevity, the relevant Paragraph No.4 of the affidavit dated 28.08.2019 is extracted hereunder:

"4. I attained the age of superannuation on 31.12.2014. Now, the Petitioner Corporation has through their counsel agreed to pay 50% of the total back wages that is due to me, along with interest, attendant benefits and terminal benefits. I humbly submit that I accept this offer and am willing for modification of the order passed by the Special Industrial Tribunal to reinstate me in service with 50% back wages and all attendant benefits."

8. In view of the same, even though this Court is not inclined to interfere with the order of the 1st Respondent, the 50% of backwages given up by the Workman shall be taken note of for settlement of the claim to the Workman. The monetary benefits payable to the Workman pursuant to the rejection order

passed by the Authority shall be extended and settled to the Workman within a period of 45 days from the date of receipt of a copy of this order. It is made clear that all the monetary benefits due to him shall be notionally calculated and the last drawn wages have to be taken note of upto the age of superannuation, as if the Workman is deemed to be in service, for the purpose of terminal benefits, including gratuity and pension, if the Workman is otherwise eligible. It is further made clear that the backwages alone is reduced to 50% upto the age of superannuation.

9. With the above observation and direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Special Deputy Commissioner of Labour,
Teynampet, Chennai-600 006.

+1cc to Mr.R.P.Prathap Singh, Advocate, SR.No.75913

+1cc to M/s.D.Geetha, Advocate, SR.No.75315

W.P.No.35135 of 2013

Kak(05/11/2019)

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