

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.29950 of 2014
and M.P.No.1 of 2014

The Management,
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Vellore Region, Vellore,
Rep. by its General Manager,

... Petitioner

-VS-

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

2. Thiru.G.Chandrasekaran

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the order passed by the 1st Respondent in Approval Petition in A.P.No.42 of 2011 dated 14.06.2013 and to quash the same as illegal.

For Petitioner : Mrs.S.Rajeni Ramadass

For R2 : Mr.S.T.Varadarajalu

ORDER

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, rejecting the Approval Petition in A.P.No.42 of 2011 on 14.06.2013.

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2. For the sake of brevity, the parties would be referred to by their original nomenclature in the Order dated 14.06.2013 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 was a Conductor in the bus bearing No.TN-23 N 1726 in Route No.303/H and though he had received a sum of Rs.80/- from two passengers, he had failed to issue tickets. Similarly, he had collected Rs.42/- from a group of passengers travelling from Hosur to Vanniyampadi and failed to issue tickets, thereby caused loss to the Corporation. These charges were denied by the Workman, for which, a detailed enquiry was conducted and the Enquiry Officer, based on the report of the Inspector, came to the conclusion that the charges are proved and therefore, the Workman was dismissed from service on 20.01.2011 after issuing show cause notice and receiving explanation from the Workman.

4. As the Industrial Dispute raised by the Workman was pending, the Management was constrained to obtain approval from the authority concerned / 1st Respondent herein for taking action against the Workman. Hence, an application has been filed by the Management before the 1st Respondent after complying with all the mandatory provisions that are required, including payment of one month wages, etc. The Authority has accepted the fact that the Management has not violated any of the procedures that are required for making an application, except the fact that there was no independent witness examined before the Enquiry Officer to establish the charges and therefore, it was held that the charges are not proved and the Approval Petition was rejected.

5. The issue to be decided in this case is as to whether an independent witness needs to be examined or not to establish the charges.

6. The charges levelled against the Workman have been denied by him, stating that the Check Inspectors have obtained duly signed blank papers from him and the same has been filled up and taken as an evidence against him and therefore, such exhibits cannot be treated as evidence. The Workman has portrayed as if on the date of inspection, he was issued with a charge memo and immediately thereafter, on the same date, he was asked to reply. But, the fact remains that after collecting the basic report on 12.04.2007, the Workman was placed under suspension with effect from 13.04.2007 together with a charge memo on the same date. The Workman had availed a clear 20 days time in submitting his explanation dated 05.05.2007 and in that explanation, he has nowhere stated that signatures have been obtained by the Inspector in 10 blank sheets and thereafter, charge memo has been issued.

7. The contention of the Workman that he had given 10 blank sheets cannot be accepted, as the same has not been referred to in Issue No.2 framed by the Labour Authority. The 1st Respondent, bearing in mind the judgment of the Hon'ble Supreme Court in the case of Lalla Ram vs. Management of DCM Chemical Works Ltd., and others, reported in AIR 1978 (SC) 1004, has framed five issues, which read as follows:

(i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;

(ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;

(iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;

(iv) whether the employer has paid or offered to pay Wages for one month to the employee; and

(v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

8. The Labour Authority, holding that four conditions out of five have been complied with by the Management, had rejected the Approval Petition on the ground of want of independent witness. 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 witnessess 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.”

9. From the above, it is apparent that there is no need to examine the independent witness. Moreover, it is seen that the Workman himself has admitted his guilt in writing, which has been marked as Ex.P9 in the enquiry and one cannot expect the passengers to come and adduce evidence, when the commencement and conclusion of enquiry is uncertain. For the meagre amount of Rs.30 to 40 per passenger, no one will stand as a witness and give deposition, especially when the past record of the Workman speaks volume against himself.

10. In view of the judgment of the Hon'ble Supreme Court in the case of J.D.Jain vs. The Management of State Bank of India (cited supra), the rejection of Approval Petition by the Authority on the ground that there is no independent witness, is not sustainable. Hence, the Writ Petition filed by the Management is liable to be allowed.

11. At this juncture, it was submitted by the learned counsel for the Workman that this Court is empowered to mould the relief. Since it is a case of approval petition and the scope of interference is very limited, in the considered opinion of this Court, interfering with the said order on the ground of technicalities and

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moulding the relief would certainly be improper, more particularly when the charges are duly proved and the 1st Respondent had erroneously rendered a finding and therefore, the said request lacks merit acceptance.

12. In the result, the Writ Petition is allowed and the order passed by the 1st Respondent in Approval Petition in A.P.No.42 of 2011 dated 14.06.2013 is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

07.08.2019

Index: Yes / No
Internet: Yes / No
Speaking Order: Yes / No
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To:

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



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