



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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| RESERVED ON  | 07.08.2019 |
| DELIVERED ON | 16.08.2019 |

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CORAM:

THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU  
and  
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.(MD)No.656 of 2019  
and  
C.M.P.(MD) No.5581 of 2019

The Management,  
Tamil Nadu State Transport Corporation  
(Kumbakonam Division III) Limited,  
Marudhupathi, Managiri Road,  
Karaikudi 630 307

... Appellant / Petitioner

Vs.

1) G.Selvaraj

... Respondent 1/Respondent 1

2) The Presiding Officer,  
Labour Court,  
Madurai.

...Respondent 2/ Respondent 2

**PRAYER:** Writ Appeal is filed under Clause 15 of Letters Patent Act against the order made in W.P.(MD) No.6983 of 2014 dated 13.03.2018.

**Prayer in WP(MD) . 6983/ 2014 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 2nd respondent relating to its order in I.D. No.99/2005, dated 29.10.2011 and quash the same.

For Appellant/  
Petitioner : Mr.D.Sivaraman  
Standing Counsel

For R1 : Mr.H.Ilango

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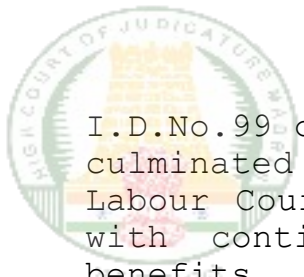
**J U D G M E N T**

(Judgment of the Court was made by **SENTHILKUMAR RAMAMOORTHY, J.**)

1. The Appellant is the Petitioner before the Writ Court. The Writ Petition was filed to quash the Award in I.D.No.99 of 2005 dated 29.10.2011 (the Award) whereby the said I.D. was allowed by directing the Appellant herein to reinstate the 1<sup>st</sup> Respondent herein in service within a period of three months from the date of receipt of a copy of the said order. By order dated 13.03.2018 in W.P.(MD) No.6983 of 2014, the Writ Petition filed by the Appellant herein was dismissed and the said order is impugned herein.

2. The facts that are relevant for the purposes of disposal of this Writ Appeal are stated briefly herein. The 1<sup>st</sup> Respondent herein was employed as a Conductor in the Appellant Transport Corporation. On 04.05.2002, he was on duty in Bus No.TN 63/ 0390/ 0345 in the Mudukulathur to Abiramam route. Enroute, the Checking Inspector checked the bus at the Vaithyanathanandal bus stop. During checking, it was ascertained that the 1<sup>st</sup> Respondent had not completed the invoice, although the bus had crossed the 2<sup>nd</sup> and 3<sup>rd</sup> stages. It was further discovered that the 1<sup>st</sup> Respondent had received a fare of Rs.3.50p per ticket from a group of two passengers, who were travelling from Mudukulathur to Keeranur, but issued them with one old ticket for Rs.3.50p. In addition, the 1<sup>st</sup> Respondent was in possession of old tickets of various denominations aggregating to a sum of Rs.155/-.

3. Based on the said evidence, a charge memo dated 07.05.2002 was issued to the 1<sup>st</sup> Respondent. This was followed by an Enquiry Notice dated 23.12.2002 in respect of an enquiry scheduled on 02.01.2003. The 1<sup>st</sup> Respondent received the Enquiry Notice and participated in the enquiry. At the enquiry, about 10 documents, including the old ticket that was issued to the passengers on 04.05.2002, the 33 old tickets that were recovered from the possession of the 1<sup>st</sup> Respondent, the charge memo, the explanation in response to the said charge memo, the last invoice and the invoice dated 02.05.2002 were filed and marked as exhibits. The 1<sup>st</sup> Respondent was assisted by an authorised representative, at the enquiry, and also cross examined the witness for the Management. Based on the said enquiry, the Enquiry Officer by Report dated 24.01.2003 concluded that the charges against the 1<sup>st</sup> Respondent were proved. Accordingly, the second show cause notice dated 23.04.2003 was issued. In the said second show cause notice, four prior instances of misconduct, including two prior instances of misappropriation, were cited and the 1<sup>st</sup> Respondent was called upon to explain as to why he should not be punished for the act of misconduct. The said second show cause notice was replied to by the 1<sup>st</sup> Respondent on 22.05.2003. On receipt thereof, the Disciplinary Authority concluded that the explantation of the 1<sup>st</sup> Respondent was not satisfactory and by order dated 02.07.2003, the 1<sup>st</sup> Respondent was dismissed from service. The said order was challenged by filing

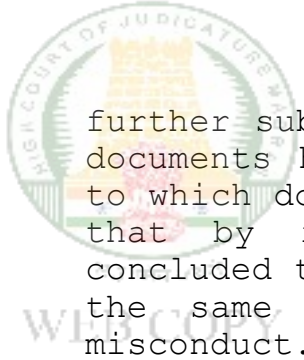


I.D.No.99 of 2005 before the Labour Court, Madurai and the said I.D. culminated in the passing of the Award dated 29.10.2011 by which the Labour Court directed that the 1<sup>st</sup> Respondent should be reinstated with continuity of service but without back wages and other benefits.

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4. At the hearing, the learned counsel for the Appellant submitted that the Award in I.D.No.99 of 2005 is perverse and is consequently liable to be quashed by also setting aside the order of the Writ Court. In order to substantiate the said submission, the learned counsel referred to the charge memo, the enquiry notice and, more importantly, the enquiry proceedings. By referring to the said enquiry proceedings, he pointed out that the 1<sup>st</sup> Respondent herein attended the said enquiry and was also assisted by N.Gunasekaran. In particular, he referred to the examination-in-chief of the Management representative, Mr.S.Sekar, and pointed out that all relevant documents, including the old tickets and relevant invoices were marked as Ex.M-1 to M-10 at the enquiry. He further pointed out that the 1<sup>st</sup> Respondent herein was permitted to and, in fact, cross examined the Management's representative. Accordingly, he submitted that the enquiry was conducted in accordance with the principles of natural justice and that at the end of such enquiry, it was found that the charge of misappropriation had been proved. He, thereafter, referred to the second show cause notice dated 23.04.2003 and submitted that the previous instances of misconduct against the 1<sup>st</sup> Respondent were referred to therein and that both the current misconduct and prior misconduct was taken into consideration while issuing the dismissal order dated 02.07.2003. In this regard, he contended that the punishment of dismissal is not disproportionate when the misconduct is misappropriation. In other words, it is his submission that the harsh punishment of dismissal is warranted when an employee is guilty of offences involving moral turpitude.

5. In these facts and circumstances, the learned counsel submitted that the Labour Court should not have interfered with the order of dismissal. He, thereafter, referred to the Award of the Labour Court and pointed out that the Labour Court concluded that the enquiry was properly conducted and also that the 1<sup>st</sup> Respondent herein had accepted that the enquiry was properly conducted. He further submitted that the Labour Court recorded a finding that the 1<sup>st</sup> Respondent herein had not denied the occurrence of the incident on 04.05.2002 and that the 1<sup>st</sup> Respondent had not submitted a proper explanation for the possession of old tickets. Once the Labour Court concluded that the enquiry had been properly conducted and that the 1<sup>st</sup> Respondent had not denied the occurrence or provided a proper explanation for the possession of the old tickets, the learned counsel submitted that misconduct was duly established before the Labour Court also. Therefore, the only issue that remained for consideration by the Labour Court was the quantum of punishment. However, the learned counsel submitted that the Labour Court erroneously reappraised the evidence and concluded that the original invoice was not filed and that the cash bag was not verified. He



further submitted that the Labour Court had recorded that important documents had been withheld by the Appellant without specifying as to which documents had been withheld. The learned counsel submitted that by recording such erroneous findings, the Labour Court concluded that the punishment of dismissal is not justified and that the same cannot be confirmed only on the basis of previous misconduct.

6. In support of his submissions, the learned counsel for the Appellant relied upon the judgments, which are set out below along with a brief description of the principles laid down therein:

(i) **Mahindra & Mahindra Limited vs. N.B.Narawade (2005) 3 SCC 134** (the Mahindra & Mahindra case) wherein, at paragraph 20, the Supreme Court held that the discretion to interfere with the quantum of punishment under Section 11A of the Industrial Disputes Act, 1947 (the ID Act) should be exercised only when the punishment is so disproportionate to the gravity of the misconduct as to disturb the conscience of the Court or if the existence of mitigating circumstances require the reduction of the sentence or the past conduct of the workmen persuades the Tribunal to reduce the punishment. In effect, it was held therein that the punishment should not be reduced only on the basis of sympathy.

(ii) **Karnataka State Road Transport Corporation vs. B.S.Hullikatti (2001) 2 SCC 574** (the KSRTC case) wherein, at paragraphs 5 & 6, the Supreme Court held that a bus conductor who had not issued tickets or issued tickets of a lower denomination is either dishonest or so grossly negligent that he is not fit to be retained as a Conductor.

(iii) **U.P.State Road Transport Corporation vs. Suresh Chand Sharma (2010) 6 SCC 555** (the UPSRTC case) wherein the Supreme Court held that the punishment of dismissal was justified although the embezzlement was of a small amount. In fact, in paragraph 22 of the said judgment, another judgement of the Supreme Court was cited for the proposition that in cases involving corruption there cannot be any punishment other than dismissal.

(iv) **Regional Manager, RSRTC vs. Ghanshyam Sharma (2002) 10 SCC 330** (the Regional Manager, RSRTC case) wherein the Supreme Court, at paragraphs 3 to 5, concluded that the discretion to interfere with the quantum of punishment under Section 11A of the ID Act should be used judiciously and that the order directing reinstatement of the Conductor with continuity of service but without back wages was liable to be interfered with because the main duty or function of the Conductor is to issue tickets, collect and deposit the fare with the Road Transport Corporation and when a



Conductor fails to do so, it would be misplaced sympathy to order his reinstatement instead of dismissal.

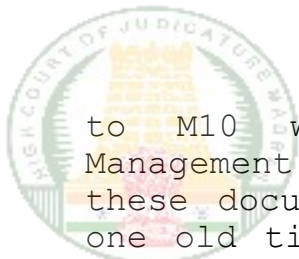
(v) **Kuldeep Singh vs. Commissioner of Police (1999) 2 SCC 10** wherein, at paragraph 10, the Supreme Court held that findings of fact recorded at a domestic enquiry should not be interfered with unless such findings are based on no evidence or on evidence which is thoroughly unreliable so as to render the order perverse.

By relying on the aforesaid decisions of the Supreme Court, the learned counsel for the Appellant concluded his submissions by contending that the order of the Labour Court is patently erroneous and perverse. Consequently, he submitted that the Writ Court erred in upholding the said order of the Labour Court on the basis that the Labour Court had entered pure findings of fact and that they have not been shown to be perverse. For reasons stated above, the learned counsel contended that the conclusion of the Writ Court is completely erroneous and that the findings of the Labour Court are perverse.

7. In response to the said submissions, the learned counsel for the 1<sup>st</sup> Respondent submitted that the evidence that was produced both at the enquiry and before the Labour Court was insufficient to hold that the charge of misappropriation is proved. In specific, the learned counsel adverted to the findings of the Labour Court that the Appellant did not produce the original invoice and did not verify the cash bag or file the statement relating to the cash bag. Therefore, according to the learned counsel for the 1<sup>st</sup> Respondent, the Labour Court was fully justified in concluding that the punishment of dismissal is not justified. The learned counsel for the Respondent also submitted that the 1<sup>st</sup> Respondent has attained the age of superannuation and that it would, therefore, be inequitable to set aside the order of the Labour Court and thereby deprive the 1<sup>st</sup> Respondent of pensionary benefits.

8. In order to substantiate his submissions, the learned counsel for the 1<sup>st</sup> Respondent referred to and relied upon the judgment of the Division Bench of this Court in W.P.No.8747 of 2009, the **State of Tamil Nadu vs. N.Govindarajan**, wherein by order dated 14.07.2009, the Division Bench dismissed the Writ Petition on the ground of laches. By relying on the said judgment, the learned counsel for the 1<sup>st</sup> Respondent submitted that as against the Award of the Labour Court dated 29.10.2011, the Appellant Transport Corporation filed the Writ Petition on 15.04.2014, i.e. after about 2 ½ years. Therefore, it was submitted that the Writ Petition was liable to be and was correctly dismissed.

9. The affidavit, documents and oral submissions were considered carefully. It is undisputed that the 1<sup>st</sup> Respondent received the charge memo and enquiry notice and also participated in the enquiry. From the enquiry proceedings, it is evident that Ex.M1



to M10 were marked during the examination-in-chief of the Management's representative at the enquiry. It is also clear that these documents included the statement of the passenger from whom one old ticket was recovered, the tickets that were issued to the group of two passengers by the 1<sup>st</sup> Respondent, the ticket that was issued without properly punching the same, the old tickets that were recovered from the 1<sup>st</sup> Respondent, the relevant invoices, etc. The record also discloses that the Management's witness was cross examined on behalf of the 1<sup>st</sup> Respondent. Consequently, it is evident that the enquiry was conducted in conformity with the principles of natural justice. It is also evident that relevant evidence was adduced before the Enquiry Officer. The Award of the Labour Court should be examined by keeping in mind the above factual context. On so examining the Award of the Labour Court, it appears that the Labour Court entered the following key findings, which are paraphrased below:

- (i) The 1<sup>st</sup> Respondent/Petitioner therein submitted that there is no need to decide the validity of the enquiry and that the 1<sup>st</sup> Respondent/Petitioner therein may be heard on the point of quantum of punishment. Hence, the Labour Court is of the view that the validity of the enquiry need not be decided as a preliminary issue since the 1<sup>st</sup> Respondent/Petitioner himself has given up the right.
- (ii) In his explanation, the 1<sup>st</sup> Respondent did not deny the occurrence on 04.05.2002 and did not submit a proper explanation for the possession of old tickets.
- (iii) It is true that the Respondent filed xerox copies of documents. But the Petitioner did not object to the marking of such xerox copies and it cannot be said that xerox copies of documents are inadmissible in evidence.
- (iv) It is seen from Ex. M-10/show cause notice that the Respondent noted four previous instances for which he was awarded minor and major punishments. Out of four incidents, three incidents are relating to misappropriation cases. The punishment cannot be confirmed only on the basis of previous misconduct.
- (v) In this case, the Appellant/Respondent did not file the original invoice and the cash bag was not verified. The statement about the cash bag was not filed. The Respondent did not file important documents which have been withheld by the Appellant herein/ Respondent therein.



Officer did not state that he has perused the invoice and the ticket book.

(vii) Under these circumstances, the Labour Court is of the view that the punishment of dismissal is not justified.

(viii) Hence, the Petitioner is only entitled to reinstatement with continuity of service.

(ix) The 1<sup>st</sup> Respondent/Petitioner therein should not repeat the same misconduct for ever. It is true that misplaced sympathy cannot be shown to a worker who is involved in misappropriation cases.

10. The question that arises for consideration is whether the aforesaid findings of the Labour Court are patently erroneous or perverse and, consequently, liable to be interfered with. In this regard, the aspect that needs to be examined is the scope of enquiry by a Labour Court under Section 11A of the ID Act. The said Section 11A of the ID Act was amended so as to empower the Labour Court to set aside the order of discharge or dismissal and direct reinstatement of the worker or award a lesser punishment instead of discharge or dismissal. After the amendment of Section 11A of the ID Act, the scope of enquiry under the amended Section 11A was considered by the Supreme Court in the **Workmen of M/s Firestone Tyre and Rubber Co. of India(Pvt.) Limited vs. The Management (1973) 1 SCC 813**. After setting out the position that prevailed prior to the amendment of Section 11A, the Hon'ble Supreme Court held as follows, in paragraph 36, with regard to the changed scope of enquiry after the amendment:

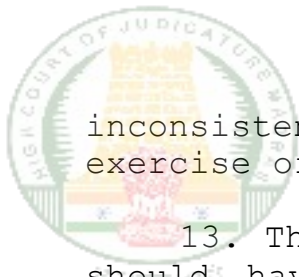
"36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron & Steel Co. Ltd. case (supra), existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by section 11-A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer, establishes the misconduct alleged against a



workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd. case can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is 'correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so: and now it is the satisfaction of the Tribunal that finally decides the matter."

11. From the above judgment, it is clear that the Labour Court is entitled to reappraise the evidence in the domestic enquiry and satisfy itself as to whether the evidence that was relied upon by the employer establishes the misconduct alleged against the workmen. In the said judgment, the Supreme Court further held that the Labour Court or Tribunal is also empowered under the amended Section 11A to interfere with the quantum of punishment. Therefore, the Labour Court certainly has the power to reappraise the evidence and come to a different conclusion from that arrived at by the Enquiry Officer.

12. The Award of the Labour Court, in this case, should be re-examined by keeping in mind the aforesaid principles laid down by the Supreme Court. The Labour Court did not consider the fact that Ex.M1 to M10 were marked before the Enquiry Officer and that the said exhibits include the statement of the passenger to whom the old ticket was issued, the tickets that were issued to the said group of two passengers, the ticket that was issued without being properly punched, the old tickets that were in the possession of the 1<sup>st</sup> Respondent/ Conductor and the relevant invoices. Instead, the Labour Court referred to the fact that the Appellant did not produce the original invoice after previously recording that the xerox copies had been filed and that the 1<sup>st</sup> Respondent herein did not object to the marking of the xerox copies. The Labour Court further concluded that the cash bag was not verified. Therefore, it appears that the Labour Court did not examine the proceedings or the report of the Enquiry Officer properly. Consequently, in the course of reappraisal, the Labour Court ignored material documents and the implications thereof and instead focussed on the non-availability of the original invoice and the cash bag. More importantly, with regard to misconduct, on the one hand, the Labour Court recorded that the 1<sup>st</sup> Respondent herein did not deny the occurrence in his explanation and did not submit a proper explanation for the possession of old tickets whereas, on the other hand, the Labour Court concluded that the 1<sup>st</sup> Respondent herein cannot be punished on the basis of previous misconduct. Moreover, the Labour Court entered a finding that the 1<sup>st</sup> Respondent should not repeat the same misconduct forever. Thus, it is evident that the Award of the Labour Court is riddled with patent



inconsistencies and there are material irregularities in the exercise of jurisdiction by the Labour Court.

13. Therefore, the question arises as to whether the said order should have been set aside by the Writ Court. In **Atlas Cycle (Haryana Limited) vs. Kitab Singh (2013) 12 SCC 573**, the Supreme Court held as follows, in paragraph 15, with regard to the scope of interference by the High Court with the findings of the Labour Court:

"15. We are satisfied that the learned Single Judge thoroughly analysed all the aspects and arrived at a correct conclusion. It is settled law that when the Labour Court arrived at a finding overlooking the materials on record, it would amount to perversity and the writ court would be fully justified in interfering with the said conclusion. We are conscious of the fact that the High Court exercising writ of certiorari jurisdiction would not permit to assume the role of the appellate court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ court would be justified in exercising its remedy. In other words, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. "

14. When the principles laid down in the said judgment are applied to the facts of the instant case, it is clear that the Award of the Labour Court can be interfered with if findings are recorded therein by overlooking the materials on record because the same would amount to perversity. In this case, as stated above, the Award of the Labour Court is inconsistent with regard to the findings of misconduct and it also ignores the material evidence that was considered by the Enquiry Officer. Moreover, as correctly contended by the learned counsel for the Appellant, as regards interference with the quantum of punishment, it is well settled in cases such as the **Mahindra & Mahindra Limited** case (cited supra) that the quantum of punishment should be interfered with only if it is so disproportionate as to disturb the conscience of the Court or if there are mitigating factors that justify a reduction in punishment. Further, as held in the **KSRTC case** and the **UPSRTC case** (both cited supra), cases of embezzlement or misappropriation justify the imposition of the punishment of dismissal and the same cannot be said to be disproportionate for such misconduct.

15. In view of the foregoing reasons, we are of the considered view that the Award of the Labour Court is perverse and contrary to the principles laid down by the Supreme Court both with regard to the reappraisal of evidence and with regard to the quantum of punishment. Consequently, the Writ Court should have set aside the



Award of the Labour Court. Instead, the findings of the Writ Court that the conclusions in the Award of the Labour Court are based on pure findings of fact and that they have not shown to be perverse are patently erroneous and liable to be interfered with.

16. As a result, this Writ Appeal is liable to be and is hereby allowed. Consequently, the Award of the Labour Court is set aside and the punishment of dismissal is restored. No costs. Consequently, connected C.M.P.(MD) No.5581 of 2019 is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS )

To  
The Presiding Officer,  
Labour Court,  
Madurai.

+1 CC to Mr.D.SIVARAMAN, Advocate SR-82081.  
+1 CC to Mr.H.ELANGO, Advocate SR-82363.

Judgment made in  
**W.A. (MD) No.656 of 2019**

Dated:  
**16.08.2019**

**sts**

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