



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2019

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.(MD) .No. 12329 of 2017

and W. M.P.(MD) No. 9495 of 2017

WEB COPY

The Management,
Tamilnadu State Transport Corporation,
(Madurai Division) Limited,
Bye Pass road, Madurai - 10.

... Petitioner

-Vs-

1. The Presiding Officer,
Labour Court,
District Court Buildings,
Madurai.

2. The General Secretary,
Tamilnadu State Transport Corporation,
National Employees Union (INTUC).
3/4A, Pattukottai Kalyana Sundaram Street,
Bye Pass Road, Madurai.

... Respondents

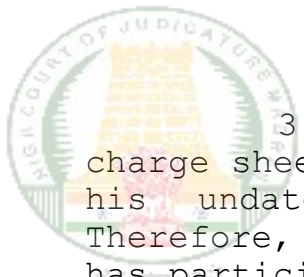
PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in the proceedings in I.D. No.73 of 2014, dated 19.11.2015, quash the same.

For Petitioner	: Mr.A. Jeyaram
For Respondent-1	: No appearance
For Respondent-2	: Mr. G. M. Xavier

ORDER

The instant writ petition has been filed by the petitioner/management challenging the award of the Labour Court, dated 19.11.2015, passed in I.D. No.73 of 2014.

2. It is the case of the petitioner/management that V.Pandiyar, who is a member of the second respondent Union was employed as a Conductor by them. While, he was on duty in their bus, bearing registration No. TN-29-N-1437 on 20.12.2010 for the trip from Melur to Udayarpatti, the checking Inspector had conducted an inspection at Chettiarpatti and found that the conductor after receiving Rs.8/- from 2 passengers for their travel from Melur to Servaikaranpatti had issued only one ticket in the denomination of Rs.8/- which was already sold in the previous trip instead of issuing tickets in the denomination of Rs.4/- and thereby misappropriated Rs.8/-.



3. According to the petitioner, the conductor V.Pandian was charge sheeted by the charge memo, dated 21.03.2011 and he submitted his undated explanation which was not acceptable to them. Therefore, it was ordered to conduct an enquiry and the conductor has participated in that enquiry. The Enquiry Officer submitted his report, dated 18.06.2011 stating that the charges against the conductor were all proved. The conductor's past records were also bad and on the report of the enquiry officer and also taking into account that the past records of the conductor, a show cause notice, dated 27.06.2011 was issued to the conductor proposing the punishment of three years increment cut with cumulative effect. The conductor has submitted his explanation on 29.07.2011 which was not acceptable to the petitioner/management. However, by reducing the proposed punishment, two years increment cut with cumulative effect was awarded by the order, dated 09.08.2011.

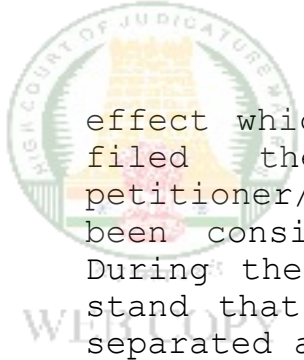
4. Challenging the above punishment awarded to the conductor, the second respondent Trade Union has raised an industrial dispute under Section 2(k) of the Industrial Disputes Act. On failure of conciliation, the dispute was referred to the first respondent Labour Court for adjudication. The Labour Court, by award, dated 19.11.2015 set aside the punishment of 2 years increment cut with cumulative effect, imposed by the petitioner/management. Aggrieved by the award dated 19.11.2015, passed by the first respondent, the present Writ Petition has been filed.

5. Heard Mr.A. Jeyaram, learned counsel appearing for the petitioner and Mr.G.M. Xavier, learned counsel appearing for the second respondent.

6. The learned counsel appearing for the petitioner drew the attention of this Court to the award of the Labour Court wherein, it has been observed that the second respondent had challenged the fairness and the validity of the domestic enquiry in the claim petition, but the same was practically not pressed into service at the enquiry. Therefore, according to him, the second respondent has not disputed the fairness and the validity of the domestic enquiry. This being the case, according to him, the Tribunal ought to have dismissed the claim petition filed by the second respondent.

7. Per contra, the learned counsel appearing for the second respondent would submit that the second respondent has not only disputed the fairness and the validity of the domestic enquiry in the claim petition, but the findings of the domestic enquiry has also been disputed and the same was considered based on the materials available on record and in accordance with law.

8. According to the learned counsel appearing for the second respondent, for a very meagre amount of Rs.8/- allegedly misappropriated by the second respondent, the petitioner/management has imposed punishment of 2 years increment cut with cumulative



effect which is contrary to law. The second respondent has also filed the domestic enquiry findings conducted by the petitioner/management which has been marked as Ex.W.3 which has also been considered by the Labour Court under the impugned award. During the domestic enquiry, the conductor V.Pandian has taken a stand that while he was in the previous trip Rs.8/- book pin got separated and one ticket got attached with another ticket book, that during the trip under the dispute, when two passengers had demanded ticket for Rs.4/- each, the conductor with the intention not to cause any loss to the Corporation and also to himself issued the said Rs.8/- ticket which was available at that time, that he had not sold the said ticket in the previous trip and therefore, he has not misappropriated the said amount of Rs.8/-. Even, in his reply, dated 29.07.2011 to the show cause notice, dated 27.06.2011, the conductor V.Pandian has given the same explanation. The Labour Court has observed that the petitioner's union has produced a copy of the same document relating to the domestic enquiry proceedings and the same was marked with the consent of the other side, but the respondent chose not to produce the copy of the enquiry proceedings and has also not adduced any evidence to disprove the statement made by the second respondent's witness. The Labour Court had observed that in the absence of enquiry proceedings, the Court is not in a position to see the nature of evidence adduced at the domestic enquiry and the answers elicited from the delinquent by the management side through their cross examination. In the absence of the enquiry proceedings and the documents produced at the time of enquiry, the Labour Court has observed that the Court is not in a position to consider and decide as to whether the findings recorded by the enquiry officer in Ex.W.3 are in accordance with the law or not. With these observations, the Labour Court has come to the conclusion that the charges levelled against the conductor V.Pandian, were not at all proved. This Court also carefully examined the impugned award and does not find any infirmity in the same.

9. This Court, under Article, 226 of the Constitution of India, is not a Court of appeal and unless and until the findings of the Court below are perverse, this Court cannot interfere with the said findings. Further, being a Labour Court award, under the Industrial Disputes Act and being a beneficial legislation to protect the interest of the workers, no ground for interference has been made out by the petitioner/management.

10. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Writ Petitions is closed.

Sd/-

Assistant Registrar(AD-I)

/TRUE COPY/



To

The Presiding Officer,
Labour Court,
District Court Buildings,
Madurai.

Order made in
W.P. (MD) .No. 12329 of 2017
22.03.2019

CS (KM) :10/05/2019/4P/2C