



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2019

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.20209 of 2019

and

W.M.P.(MD)No.16758 of 2019

WEB COPY

The Management,
Through the General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Region, Vannarpettai,
Tirunelveli.

... Petitioner

vs.

The General Secretary,
Nellai District Transport Corporation
Employees Union, C.I.T.U.,
Tirunelveli - 3

... Respondent

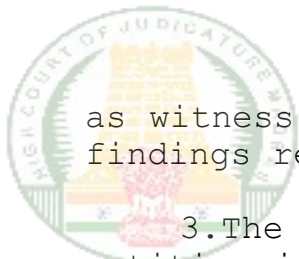
Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, calling for the records from the Labour Court, Tirunelveli, relating to the impugned award passed by it in I.D.No.52 of 2009, dated 13.12.2011 and quash the same and to grant such further or other orders, as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.K.Sathiya Singh

ORDER

This Writ Petition has been filed seeking to quash the impugned award dated 13.12.2011, passed in I.D.No.52 of 2009, by the Labour Court, Tirunelveli.

2.According to the petitioner, on 02.11.2003, one M.Paramasivan while working as a Driver in the Petitioner Transport Corporation was in a drunken mood and abused the Management Staffs in filthy language. Due to his rash and negligent driving, he caused damage to the front grill of the bus bearing Registration No.TN-32-N-1215. Therefore, he was temporarily suspended from service on 14.11.2013 by the Petitioner Management. Thereafter, a charge memo was issued to him. A domestic enquiry was conducted by the Petitioner and all the charges framed against the said employee were proved and hence, the Management imposed a punishment of stoppage of increment for three years with cumulative effect. Challenging the said punishment imposed on the employee, the respondent Trade Union has raised an Industrial Dispute in I.D.No.52 of 2009 before the Labour Court, Tirunelveli, on the ground that the person, who gave the complaint, was not examined and one Kannapiran, who was working as a Branch Manager and was not present in the scene of occurrence, was examined



as witness and the domestic enquiry was not fair and proper and the findings recorded by the Enquiry Officer were perverse.

3.The Petitioner Management filed counter contending that the petition is not maintainable. On 02.11.2003, said employee was in a drunken mood and abused the Management Staffs in a filthy language and due to his rash and negligent driving, caused damage to the front grill of the bus and therefore, he was temporarily suspended from service on 14.11.2013 by the Petitioner Management. Based on the report of the Enquiry Officer, in which, the charges against the said employee were proved, the Petitioner Management imposed a punishment of stoppage of increment for three years with cumulative effect and prayed for dismissal of the said I.D.

4.Before the Labour Court, the respondent did not let in any oral and documentary evidence. On the side of the Management, one Kannapiran was examined as M.W.1 and 12 documents were marked as Exs.M.1 to M.12.

5.The Labour Court framed necessary points for consideration and after considering the pleadings and evidence let in by the petitioner, set aside the punishment imposed on the employee on the ground that R.Kannapiran, Branch Manager, who was examined as witness, was not present in the scene of occurrence and therefore, his evidence cannot be relied upon and the person, who gave complaint, was not examined as witness and the domestic enquiry was not fair and proper and the findings recorded by the Enquiry Officer were perverse.

6.Against the said Award dated 13.12.2011, the present Writ Petition is filed.

7.The learned counsel for the petitioner submitted that the Labour Court failed to take into consideration the material fact that due to the rash and negligence of the said driver, the accident had occurred and front grill of the bus was damaged and the domestic enquiry was conducted properly, wherein all the charges were proved. The petitioner imposed punishment of stoppage of increment for three years with cumulative effect taking lenient view. The Labour Court failed to consider that the driver on duty was in drunken mood, abused the Officer on duty and committed misconduct as mentioned in the Standing Orders. Therefore, prayed for allowing the Writ Petition.

8.I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

9.The crux of the allegation leveled against the employee is that at the time of accident, he was in a drunken mood and drove the Corporation bus in a rash and negligent manner and caused damage to the front grill of the bus. On a perusal of the records, it is seen



that on the side of the Petitioner/Management, one R.Kannapiran, Branch Manager, has been examined as M.W.1. He has narrated the occurrence happened on 02.11.2003. Except the said witness, the Management has not examined any other witness to prove the charges leveled against the employee. It is seen from the records that the said witness is not an eyewitness. He has not witnessed the occurrence and therefore, his evidence cannot be given credence for proving the charges leveled against the employee. Further, in the report of the Enquiry Officer, which was marked as Ex.M.10, it has been stated that the driver working in the Petitioner Corporation will not be permitted to examine the Conductor and Passengers to disprove the charges leveled against him. In my considered opinion, the said approach of the Enquiry Officer in his report is violative of the principles of natural justice. It is for the Management to prove the charges leveled against the employee and once the Management has discharged the burden of proof, then the burden is shifted on the employee to disprove the charges leveled against him. It is also seen from the records that the Enquiry Officer without examining any eyewitness and without applying his mind to the nature of charges framed against the employee, solely relying on the evidence of M.W.1, has come to the erroneous conclusion that the charges were proved. Also, the evidence of M.W.1 remains unsupported with any other evidence and therefore, his evidence cannot be relied upon. Thus, *prima facie*, it could be seen that the charges are not proved by the Management and the Labour Court has rightly set aside the punishment imposed by the Petitioner Management. Further, the Award of the Labour Court is dated 13.12.2011 and the petitioner has come out with the present Writ Petition in the year 2019.

10.For the reasons stated above, the impugned Award of the Labour Court does not call for any interference by this Court. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cs-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Labour Court, Tirunelveli.

+1 CC to M/s.K.SATHIYA SINGH, Advocate SR-88082.

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CS(11.10.2019) 3P 3C

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