

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 11594 of 2004
and
W.M.P. No. 13641 of 2004

The Management,
Tamil Nadu State Transport
Corporation (Madurai Division I) Limited,
Madurai 625 010. ... Petitioner

-vs-

1. The Presiding Officer,
Labour Court,
Madurai.

2. M. Vijayakrishnan ... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, praying for issuance of Writ of
Certiorari to call for the records of the first respondent in
I.D. No. 268 of 1996 dated 14.08.2003 and quash the same.

For Petitioner : Mr. D.Venkatachalam
Standing Counsel

For Respondents : R1- Court
R2- No appearance

O R D E R

The prayer sought for herein is for a Writ of Certiorari to
call for the records of the first respondent in I.D. No. 268 of
1996 dated 14.08.2003 and quash the same.

2. The short facts which are required to be noticed for the
disposal of the Writ petition are as follows:

(i) That the second respondent was working as a Conductor in
the petitioner Transport Corporation for about three years. His
last drawn salary per month was Rs.2,900/-. While so, on
31.03.1995, the second respondent while he was on duty in a bus
of the petitioner / Corporation bearing Registration No. TN-
59/N.0883 running on the route of Madurai to Kumbam, the
Checking Inspector checked the bus at a place called Sasthakovil.

(ii) During the checking, according to the Checking Inspector, there were two passengers, who were traveling from Usilampatti to Kumbam had got ticket from the second respondent only up to Theni and when this was verified with the invoice, according to the Checking Inspector, it was only 32 1/2 passengers, whereas the actual passengers were 34 1/2. Therefore, the Checking Inspector enquired with the said two passengers and got statements from them stating that, though they wanted to travel from Usilampatti to Kumbam or Usilampatti to Chinnamanur, they had been given ticket by the second respondent only up to Theni.

(iii) Therefore, the Checking Inspector found that, in order to misappropriate a sum of Rs.8.50/-, by not issuing tickets to these two passengers, the second respondent had given tickets to them only up to Theni. Therefore, in this regard, the disciplinary proceedings was initiated against the second respondent and he had been suspended from service from 27.04.1995 to 24.08.1995.

(iv) Thereafter, domestic enquiry was conducted, where all necessary opportunities were given to the second respondent and he also participated in the domestic enquiry.

(v) The charge memo dated 29.04.1995 was enquired in the domestic enquiry, where ultimately the Enquiry Officer found the guilt against the second respondent was true. Based on the Enquiry Officer's report, a second show cause notice also was given on 11.10.1995 along with the copy of the Enquiry Officer's report dated 01.07.1995 and the second respondent submitted his explanation to the second show cause notice on 18.10.1995. Not satisfied with the explanation given by the second respondent, accepting the Enquiry Officer's report, the petitioner / Corporation being the disciplinary authority against the second respondent has inflicted the punishment of the petitioner, by dismissal of service, by order dated 14.12.1995.

(vi) Challenging the said order of dismissal of the petitioner, the second respondent raised the Industrial Dispute in I.D. No. 268 of 1996 on the file of the first respondent, where the first respondent / Labour Court, having heard the I.D. and based on the evidences adduced before the Labour Court, has passed the impugned award dated 14.08.2003, where the Labour Court though has accepted the guilt on the part of the second respondent having been proved, on the ground of proportionality of the punishment by invoking Section 11-A of the Industrial Disputes Act, has interfered with the punishment, accordingly setting aside the same and directed the petitioner / Corporation to reinstate the second respondent with the continuity of service, however the backwages had been denied. Aggrieved over the said impugned order passed by the first respondent / Labour Court, the petitioner / Employer Transport Corporation has filed this Writ Petition with the aforesaid prayer.

3. Notice has been served on the second respondent, who is the contesting respondent, in the year 2004 itself, and his name has also been printed in the cause list and it seems that before several times, the matter had come up for hearing and it had been adjourned time and again. Today also, when the case is taken up for hearing, there is no appearance on behalf of the second respondent.

4. Mr. D.Venkatachalam, learned Standing counsel appearing for the petitioner / Corporation, by relying upon the discussions made by the Labour Court in the impugned award, has contended that, though the Labour Court has accepted that the charge made against the second respondent has been proved, only on the presumptive inference, the punishment awarded against the second respondent was interfered. In this regard, it is to be noted that, it is the confidence of the Employer Transport Corporation on every employee, especially the second respondent, who is the Conductor of the bus and he works under fiduciary capacity. Therefore if any action on the part of the second respondent shattering such confidence reposed on such employee of the employer, where the amount misappropriated is a small or lesser one, the maximum punishment of dismissal of service can be inflicted. In this regard, number of judgments were passed by this Court and by the Apex Court. Therefore the Labour Court ought not to have interfered with the punishment awarded to the second respondent. Therefore the impugned order is liable to be interfered with, he contended.

5. I have considered the said submissions made by the learned counsel appearing for the petitioner and gone through the impugned award passed by the first respondent / Labour Court.

6. The Labour Court has discussed elaborately the case and counter case of the parties based on the evidences adduced before it, however it has come to the conclusion that the punishment awarded to the second respondent for a sum of Rs.8.50/- is not proportionate to his misconduct.

7. In order to have a ready reference of the said findings, the relevant portion of the award impugned are quoted here under:-

" 26. The judgment referred above reveals that misappropriation of the ticket fare amount is seriously viewed against the standing order 16 (5). The petitioner is given an opportunity to

take part in the domestic enquiry and he was given sufficient opportunity in the domestic enquiry. The main contention of the petitioner is that the past records of the worker have not been shown to him in the domestic enquiry and the respondent corporation received on the explanation given by the petitioner alone. The contention of the respondent is that the petitioner himself admits his guilty in Ex.M2 and the enquiry proceedings. Hence the dismissal of the petitioner from service is correct as contended by the respondent. The amount involved in the transaction is not a criteria. The act of the petitioner is seriously viewed terming it has misconduct. There is no irregularity of law in the domestic enquiry conducted by the respondent corporation but the punishment awarded to the petitioner for a sum of Rs.8.50/- is not proportionate to his misconduct.

27. The petitioner filed this petition praying the relief of reinstatement, backwages and continuity of service.

28. Since the order of termination passed by the petitioner is excessive and not proportionate to the guilty of his conduct. Hence, this Court is inclined to invoke the power vested under Section 11A of the Industrial Disputes Act.

29. Considering the entire pleadings and the materials adduced on both sides the order of termination passed against the petitioner dated 14.12.1995 is hereby set aside. The petitioner is entitled to get an order of reinstatement without any backwages with continuity of service.

30. In the result, the Industries Dispute is allowed in part, the respondent is directed to reinstate the petitioner without backwages with continuity of service. In the circumstances of this case there will be no order as to cost."

8. From the aforesaid findings, it has become clear that, the Labour Court has come to the conclusion that, the second respondent was responsible for misappropriation of a sum of Rs.8.50/-.

9. If he is a conductor working in a bus of the petitioner / Corporation, he cannot misappropriate or steal the money of several thousands of or lakhs of rupees. Only these kind of minor amount misappropriation would be possible on the hands of the persons like the second respondent as the job is a conductor

running in a local bus. Therefore, merely because a sum of Rs.8.50/- alone since has been misappropriated and in this regard, the guilt on the part of the second respondent since has been proved, the Labour Court should not have come to the conclusion that, the punishment is not proportionate or it is disproportionate based on the quantum of the sum misappropriated.

10. If the prayer of the petitioner was accepted by the labour Court in part, then there must be a table in the theory of punishment, that in case of misappropriation, based on the quantum of the misappropriation alone, different types of minor or major punishments can be inflicted. Such a proposition would be highly disastrous to the theory of punishment itself.

11. If any such proof of misconduct is noticed, it might be kept for consideration before the disciplinary authority and it is the discretion of the disciplinary authority to award maximum punishment or not and the disciplinary authority itself has come forward to inflict a minimum punishment or lesser punishment, it is for such disciplinary authority to take a decision. Therefore, on the ground of proportionality even under Section 11A of the Industrial Disputes Act, the Labour Court ought not to have come to this conclusion that the punishment awarded against the second respondent is disproportionate because the quantum of misappropriated amount is only Rs.8.50/-.

12. The said reasoning given by the Labour Court for interfering with the punishment awarded on the second respondent, in the considered opinion of this Court, is unsustainable and therefore, on that ground, this Court feels that the impugned award is liable to be interfered with.

13. At the same time, the second respondent had worked only for three years at the time of taking disciplinary action and therefore, he would have lost considerable number of years of service during the pendency of this Writ Petition.

14. In this context, it is further to be noted that, while admitting this Writ Petition in the year 2004, this Court granted interim order of stay in the following terms.

"On the petitioner complying with Section 17B of the Industrial Disputes Act, there will be a stay of the order of the Labour Court, failing which, interim stay granted will stand automatically vacated without any further reference to this Court."

15. Therefore, the conditional interim order of stay granted by this Court is that, only on complying with Section 17B of the Industrial Disputes Act on the part of the employer alone, the

stay will continue otherwise the stay would automatically be vacated. In this context, the learned counsel appearing for the petitioner, on instructions has submitted that, the second respondent has not been paid any 17B wages or he has been reinstated all these years during the pendency of this Writ Petition. If 17B wages has not been paid to the second respondent, automatically the stay granted against the impugned award by the Labour Court could have been vacated long back. Therefore, during the pendency of the Writ Petition, the second respondent, as per the award, which is impugned, of the Labour Court, could have been in a position to get his job and by this time and all these years he would have worked. Any how, the chance have not been given to the second respondent and the second respondent has not come forward before this Court to agitate this issue in all these years and even today, he is absent, despite the notice served on him long back.

16. Therefore, considering this situations and taking in to account, the factual matrix of the case as well as the reasons stated above, this Court is inclined to pass the following order:-

"(i) That the impugned award passed by the Labour Court in I.D. No. 268 of 1996 dated 14.08.2003 is hereby set aside.

(ii) However, the second respondent shall be entitled to get 17B wages for all these years as per the orders of this Court. Therefore such 17B wages shall be calculated for all these years and accordingly, the same shall be paid to the second respondent. In this regard, after calculating the 17B wages, the same shall be intimated to the second respondent and if he does not come forward to collect the same, despite the notice in this regard issued which is served on him, the said 17B wages amount shall be kept in a separate account for a period of six months and till such time, if he does not come forward, the same shall be utilized by the petitioner / Corporation."

17. With these directions, the Writ Petition is ordered accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IX)

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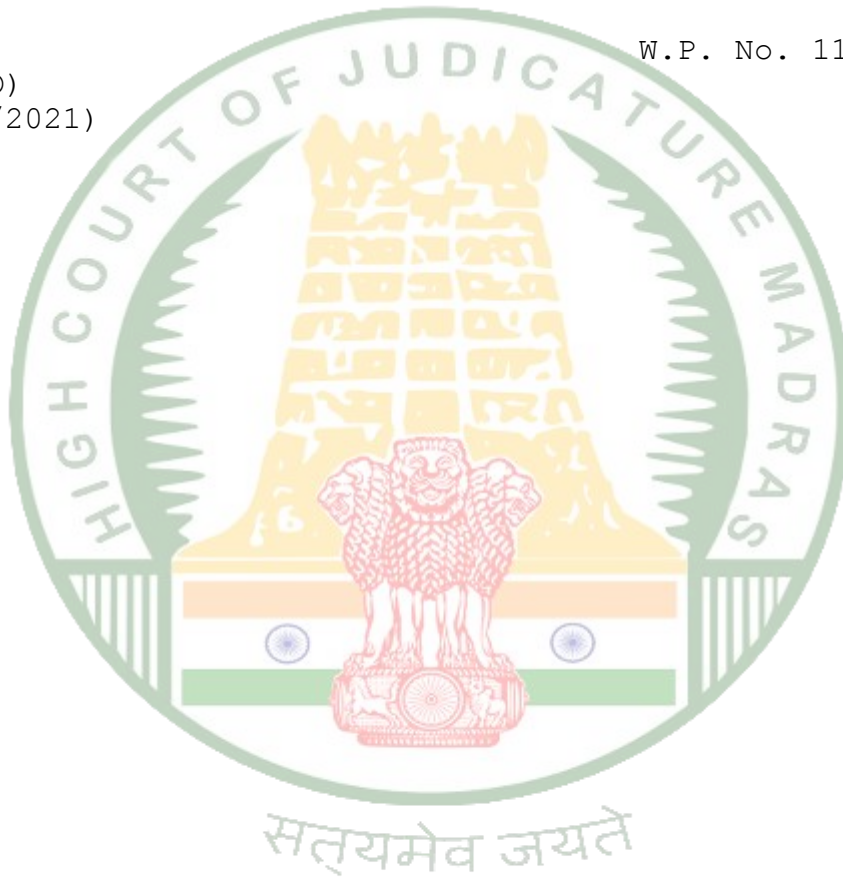
Sub Assistant Registrar

To
The Presiding Officer,
Labour Court,
Madurai.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.36884

VSN II (CO)
NRA(19/02/2021)

W.P. No. 11594 of 2004



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