

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.38357 of 2015

and

M.P.No.1 of 2015

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam Division I) Limited
Kumbakonam.Petitioner

vs.

1. R.Vedharathinam
S/o.Ramachandran
2. The Presiding Officer
Labour Court,
Cuddalore.Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 1st respondent in I.D.No.138 of 2003 and quash the award passed in I.D.No.138 of 2003 dated 23.01.2014 as illegal.

For Petitioner : Mr.D.Venkatachalam
For Respondent : Mr.V.Ajoy Khose
for R1

For R2 : Court

O R D E R

The Management is the writ petitioner. Challenge made is against the award of the Labour Court dated 23.01.2014, in modifying the punishment of dismissal into one of stoppage of two increments with cumulative effect. The Labour Court also directed the petitioner-Management to grant continuity of service with backwages and other monetary benefits from the date of dismissal till the date of retirement. The Labour Court further directed the petitioner-Management to pay all the retirement benefits to the first respondent herein.

2. The case of the petitioner-Management is as follows:

The first respondent was working as a conductor in the petitioner-Corporation. While he was on duty on 13.03.2001, a surprise check was conducted by the Checking Inspectors and it was found that the first respondent received cash and not issued tickets to the tune of Rs.6/- to two female passengers, who were boarded at Karikkottai. The first respondent had excess cash of Rs.12.70 in his cash bag. He was suspended from service on 21.03.2001. Thereafter, the very next day, i.e. on 21.03.2001, suspension order was revoked. He was issued with a charge memo on 28.04.2001. The explanation submitted by the first respondent was not satisfactory. Enquiry was conducted. The Enquiry Officer submitted his report confirming that the charges were proved. Consequently, the petitioner-Management issued an order of dismissal dated 06.02.2002. The first respondent raised an industrial dispute in I.D.No.138 of 2003 challenging the order of dismissal dated 06.02.2002. The Labour Court found that the charges were not proved and thus, passed the impugned award.

3. The learned counsel for the petitioner-Management submitted that the first respondent was negligent in not issuing appropriate tickets to two female passengers, as admitted by him during the enquiry. He thus, submitted that the first respondent instead of issuing Rs.3/- tickets to the female passengers had issued Rs.4/- tickets to them. Therefore, he submitted that on the ground of negligence, dismissal of the first respondent ought not to have been interfered with.

4. On the other hand, the learned counsel for the first respondent submitted that the Labour Court found that the charges levelled against the first respondent were not proved and however, modified the punishment of dismissal into one of stoppage of two increments with cumulative effect only based on the admission made by the first respondent regarding his negligence by not issuing appropriate tickets to the passengers. Therefore, he submitted that the impugned award does not require any interference.

5. Heard both sides and perused the award passed by the Labour Court.

6. Two charges framed against the first respondent are as follows:

(a) The first respondent failed to issue tickets to two female passengers after receiving Rs.3/- each from them and thus, caused loss of Rs.6/- to the petitioner-Corporation.

(b) The first respondent was found in excess cash of Rs.12.70 in his cash bag.

7. When the petitioner-Management claimed that the first respondent herein did not issue tickets to two female passengers and however, collected a sum of Rs.6/- from them, the first respondent denied such allegation and contended that he in fact issued tickets to them. Therefore, the right persons to speak about the allegation are those two female passengers. It is seen that those two female passengers were examined as witnesses in the domestic enquiry, where they deposed before the Enquiry Officer that the first respondent herein had issued tickets and they had lost them in the bus and had told the examiners to that effect. While cross-examining those two female passengers, the petitioner-Management was not in a position to disprove their statements in any manner. Therefore, it is evident that those two women passengers have clearly spoken against the charge and stated that the first respondent had in fact issued the tickets. Therefore, the Labour Court is justified in holding that the petitioner-Management did not prove such charge. Insofar as the 2nd charge viz., excess cash of Rs.12.70 in the cash bag is concerned, no other evidence or materials are placed by the petitioner-Management at the time of enquiry to substantiate that excess cash found in the cash bag is the amount received by the first respondent from two women passengers without issuing tickets to them. In the absence of any corroborative evidence in support of such allegations against the first respondent that excess amount of Rs.12.70 found in the cash bag is the amount received by the first respondent without issuing tickets to the passengers, the Labour Court is right in concluding that even the 2nd charge is also not proved. However, the Labour Court found that the first respondent was negligent, even as per his admission, that he issued Rs.4/- tickets to 2 women passengers instead of Rs.3/-. It is also found by the Labour Court that the first respondent was not clear as to the place of boarding of those two women passengers.

8. Considering the above stated facts and circumstances and the findings that the punishment of dismissal from service is too harsh, the Labour Court thought that the stoppage of two increments with cumulative effect is an appropriate punishment that could be imposed on the first respondent. Accordingly, the Labour Court set aside the punishment of dismissal and modified the punishment to one of stoppage of two increments with cumulative effect.

9. Going by the above stated facts and circumstances and the findings rendered by the Labour Court based on appreciation of evidence and the factual aspects of the matter, I do not find any reason to interfere with the award of the Labour Court, except in respect of quantum of the backwages, which I am discussing below, more particularly, when the first respondent

has not chosen to challenge the said award of the Labour Court and accepted the same.

10. Now, this Court has to consider the question as to whether the first respondent is entitled to receive full backwages as awarded by the Labour Court in view of the fact that he was not working from 06.02.2002 onwards till his date of his superannuation.

11. Considering the fact that the punishment of dismissal is modified by the Labour Court as one of stoppage of two increments with cumulative effect and further considering the fact that the first respondent did not work from 06.02.2002 till 31.03.2010, being the date of superannuation, I find that it would be appropriate to direct the petitioner-Management to pay only 50% of the backwages to the first respondent instead of full backwages as awarded by the Labour Court.

12. Accordingly, this Writ Petition is disposed of, as follows:

(a) The award of the Labour Court is modified only to the extent that the first respondent herein is entitled to only 50% of backwages.

(b) Since continuity of service is awarded by the Labour Court, which is not interfered by this Court, the petitioner-Management shall pay the employer's contribution for the purpose of computation of pension in respect of the entire service period, notwithstanding the fact that this Court has directed to pay only 50% of backwages.

(c) In all other respects, the award of the Labour Court is sustained.

(d) The petitioner-Management shall comply with the award passed by the Labour Court, as modified by this Court, as referred supra, within a period of eight weeks from the date of receipt of a copy of this order.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

mk

To

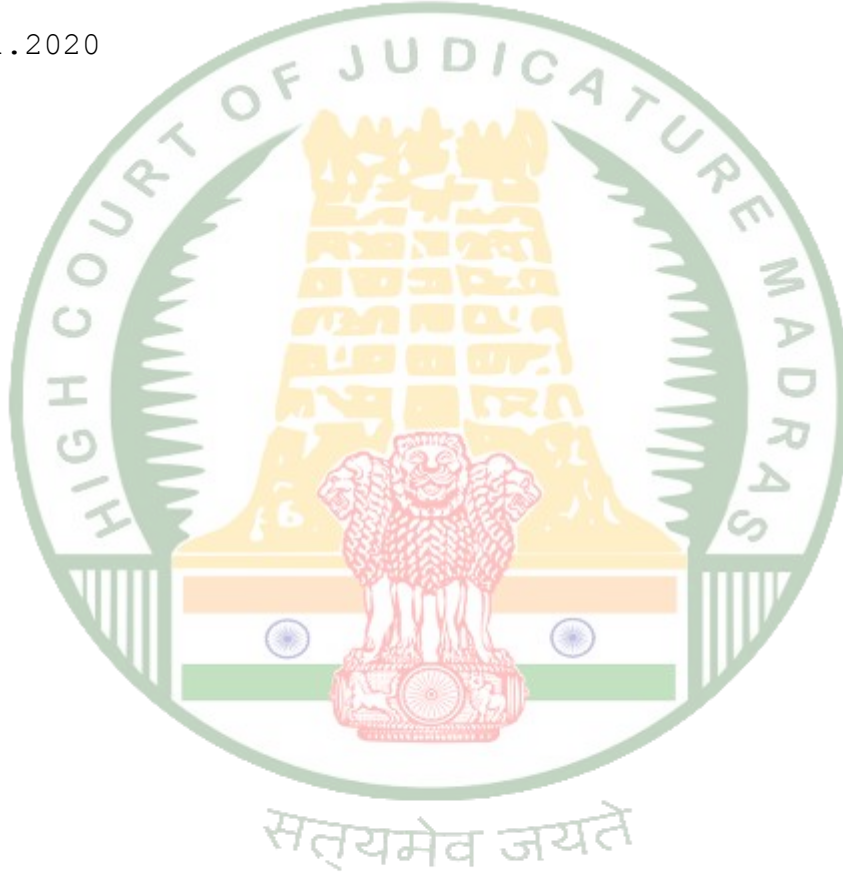
The Presiding Officer
Labour Court,
Cuddalore.

+1cc to Mr.D.Venkatachalam, Advocate, SR.No.904.

+1cc to Mr.V.Ajoy Khose, Advocate, SR.No.717.

W.P.No.38357 of 2015

MP (CO)
CSR: 31.01.2020



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