

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE
AND
The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.705 of 2020

M.Sekar ..Appellant/2nd Respondent

-vs-

1. Presiding Officer,
1st Addl. Labour Court,
Vellore.1st Respondent/1st Respondent
2. The Management,
Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Thiruvannamalai Region,
Thiruvannamalai.2nd Respondent/Petitioner

Appeal filed under Clause 15 of the Letters Patent against the order dated 24.01.2020 passed in W.P.No.37956 of 2016 on the file of this Court.

Prayer in WP No.37956 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari to call for the records of the first respondent made in I.D.No.172 of 2014 dated 25.05.2015 and to quash the same as illegal.

For Appellant : Mr.S.T.Varadarajulu

For Respondents : Mr.C.S.K.Sathish
for R-2

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant and learned counsel for the second respondent.

2.The appellant was terminated from service while functioning as a Conductor in the respondent Corporation. He assailed the termination order through a dispute before the Labour Court and an award was rendered on 25.05.2015. We will extract paragraphs 7 and 8 of the award herein, to ease out the understanding of the entire controversy. Paragraphs 7 and 8 are as under:-

"7.Though the petitioner was a conductor, the duty of the conductor is issuance of tickets and remitting the collection on the day itself. The petitioner committed the same offence not only one or two times but committed 64 times for that reasons finally dismissed from service. The dismissal was also confirmed by the Special Deputy Commissioner of Labour which is marked as MW-Ex-11. It is decided in the preliminary issue that the petitioner was dismissed after given the ample of opportunity during the enquiry and the enquiry was conducted with in the ambit of Principles of Natural Justice. The petitioner pleaded that he worked for 26 years, if he dismissed from service his family would starve and thrown into the street. For the committing the same offence for 64 times the petitioner was not only cause the respondent also. Every time imposing of the minor punishments instigated to committee the same offence usually. Further it is learnt from the documents filed in this court that the petitioner remitted the bus collection on the very next day itself and it is not denied by the respondent.

8.On examining the available documents it is decided that the charges proved is found correct but the court wants to show sympathy since the punishment is harsh. The Authorized Representative argued that to modify the punishment and to pass award to reinstate in service based on the petitioner's health condition and family situation. Further argued that the petitioner is going to retired very soon. The respondent has not raised any objection against the arguments. On the forgoing reasons the dismissal order is set aside and ordered to reinstate with continuity of service without back wages and other attendant benefits. Hence answered to these issues and order that except these benefits other service benefits should be given. No cost."

It is, therefore, evident that the charges were found to be proved. It is also evident that the Labour Court used the caption "wants to show sympathy" and therefore, the dismissal order was set aside with reinstatement and continuity of service

without backwages and other attendant benefits.

3.The Corporation came up before this Court and the learned single Judge, after having traversed the entire facts of the case and the law on the subject, came to the conclusion in paragraph 19 of the impugned judgment that even though Labour Court has the power under Section 11-A of the Industrial Disputes Act, 1947, yet such a discretionary power has to be exercised cautiously, judicially and judiciously. In our considered opinion, the Labour Court was swayed away by sympathy alone and not by any judicious discretion keeping in view the background that the charges had been proved.

4.On the doctrine of proportionality, the learned single Judge after having minutely recorded the facts, noted in paragraph 22 as under:-

"22.While considering the proportionality of the punishment imposed by the Management, it is seen that entire facts and circumstances and the past conduct of the workman would only justify such punishment. The second respondent herein is not a person with clean service record. He was punished with minor punishment for 64 times for temporary misappropriation and also for short payment of the amount collected. Apart from the above delinquencies committed for 64 times, the second respondent was also punished 9 times for not remitting the collection within the time stipulated. Further, he was punished for 6 times for unauthorized absence. He was also punished for 9 times for dereliction of his duty such as not issuing tickets to the passengers and for being in an inebriated condition during the working hours. Therefore, all these past conduct of the second respondent would undoubtedly indicate that he is of the person habitually committing the delinquency again and again, unmindful of the punishment imposed by the Management in all those occasions."

5.The inference drawn by the learned single Judge was that this conduct of the appellant would generate indiscipline amongst the cadres and therefore, a strong and a firm message should be sent. The learned single Judge, further, opined and in our opinion, rightly so, that the Management should not have given such a long rope to the appellant as a result whereof it crystallized into a situation which was detrimental to the Corporation. Nonetheless, the misconduct stood proved and therefore, the learned single Judge set aside the award and restored the punishment of termination. We entirely agree with the reasoning of the learned single Judge.

There is no merit in the appeal and it is, accordingly,
dismissed. No costs.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

To

1. The Presiding Officer,
1st Addl. Labour Court,
Vellore.
2. The Management,
Tamilnadu State Transport
Corporation (Villupuram) Ltd.,
Thiruvannamalai Region,
Thiruvannamalai.

+1cc to Mr.C.S.K.Sathish, Advocate, Sr.No.35854

+1cc to Mr.S.T.Varadarajulu, Advocate, Sr.No.35771 (27/01/2021)

W.A.No.705 of 2020

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