

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

ORDERS RESERVED ON 09.01.2020

ORDERS DELIVERED ON 24.01.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.37956 OF 2016
and
WMP No.32551 of 2016

The Management,
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Thiruvannamalai Region,
Thiruvannamalai,
Rep. by its General Manager.Petitioner

Vs.

1.The Presiding Officer,
I Additional Labour Court,
Vellore.

2.M.SekarRespondents

Prayer: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 Petitioner : M/s.Rajeni Ramadoss

For Respondent : Mr.S.T.Varadarajulu for R2
R1 - Court

O R D E R

The Tamilnadu State Transport Corporation (Villupuram) Limited/Management is the writ petitioner. Challenge made herein is against the award passed by the Labour Court in I.D.No.172 of 2014 dated 25.05.2015. Through the impugned award, the Labour Court set aside the order of termination of the service of the second respondent and directed the Management to reinstate him with continuity of service, however without

backwages. The Labour Court also ordered that the second respondent is not entitled to leave salary, bonus and annual increment during the period in which he was not working.

2. The case of the writ petitioner is as follows:

The second respondent was appointed as Conductor at the petitioner Corporation in 1984. He was found to be chronically remitting the cash collection belatedly. On 01.04.2009, the second respondent while discharging his duty as a Conductor, failed to remit the amount before 13.30 hours on the same day. He had remitted that cash at the next day at his relish. Thus, there was a short misappropriation of collection till 02.04.2009. The second respondent did not inform or instruct with regard to the delayed payment. In a similar fashion, he had remitted the cash collection belatedly on 64 occasions, thereby enjoying the short holding of the amount for short period. He also stayed on an unauthorized absence on 9 occasions, resulting in a gross negligence of work. The petitioner Management issued a charge memo dated 26.04.2009 for the charges relating to the belated remittance of cash collection on 01.04.2009. He was also placed under suspension. The second respondent submitted a reply on 24.04.2009. He was restored to service on 05.05.2009. Being dissatisfied with the reply given by the second respondent, a domestic enquiry was ordered. The Enquiry Officer conducted the domestic enquiry in strict adherence of the principles of natural justice. The Enquiry Officer filed his report on 06.01.2010, finding that all the charges were proved. A second show cause notice dated 02.06.2010 was issued on the second respondent, seeking for his explanation for the provisional conclusion arrived by the Management for dismissing him from service. The second respondent sent a reply. However, he was dismissed from service on 20.07.2010. Since an industrial dispute was pending at that time, before the Joint Commissioner of Labour, Conciliation, the petitioner Management filed an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act. The Approval Petition was allowed on 31.10.2010. The second respondent challenged the order of dismissal by raising the industrial dispute in I.D.No.172 of 2014 before the Labour Court. Though the Labour Court was pleased to hold that the enquiry was fair and proper; that the charges were proved and that the incidents occurred on 64 occasions stood proved, however was pleased to hold that the charges and the punishment did not commensurate. Accordingly, the Labour Court interfered with the punishment by exercising its power under Section 11A of the said Industrial Disputes Act. The decision of the Labour Court is bad in the eye of law. The Labour Court has not exercised the discretionary jurisdiction under Section 11A judiciously. Hence, the present writ petition.

3. The second respondent has not filed any counter affidavit.

4. The learned counsel for the petitioner Management submitted that the Labour Court ought not to have interfered with the punishment of dismissal, having found that the second respondent had repeatedly committed similar delinquencies on 64 occasions. She further pointed out that apart from committing similar delinquency on 64 times in the past and suffering minor punishment on all those occasions, the second respondent also committed other misconduct such as unauthorized absence on six times and dereliction of duty on nine times and suffered punishment on all those occasions. She further pointed out that merely because the second respondent remitted the amount the very next day, that will not absolve his liability against the charge of misappropriation for a shorter period. She also contended that the discretionary power conferred on the Labour Court under Section 11A of the said Act, has not been exercised in this case judiciously and on the other hand, the Labour Court had been carried over only on sympathy ground. Thus she submitted that even a single act of corruption is enough to impose major punishment, especially when temporary misappropriation is also a charge levelled against the second respondent in this case.

5. In support of her contention, the learned counsel relied on a decision of the Gujarat High Court dated 07.03.2005 made in Gujarat State Road Transport vs. Dhayabhai Lavjibhai Rohit.

6. Learned counsel for the second respondent/Workman submitted as follows:

The second respondent had rendered 26 years of service. The Labour Court rightly interfered and modified the punishment of dismissal from service, by invoking its power under Section 11A of the said Act. The very fact that the entire backwages are denied to the second respondent would show that he suffered a major punishment. The Labour Court has ordered only to reinstate the second respondent without backwages. On 12.06.2015, the second respondent attained the age of superannuation. The temporary misappropriation charge is not proved, especially when the second respondent remitted the collection on the next day. The award passed by the Labour Court by misusing its discretionary power under Section 11A need not be interfered with by this Court under Article 226 of the Constitution of India, in the absence of any perversity in the award passed by the Labour Court.

7. In support of the above contention, the learned counsel for the second respondent relied on the following decisions:

i) 1989 (2) LLJ 233, The President, Cholan Pokkuvarathu
Kazhagam vs. The Presiding Officer, Industrial
Tribunal;

ii) 1990 (2) LLJ 468, The Management of Tafe vs.
R.Venkataraman;

iii) 1996(2) LLJ 335 (SC), Palghat BPL & PSP Thozhilali
Union vs. BPL India Ltd.,

8. After arguing so, the learned counsel for the second respondent concluded his submissions by saying that in case, this Court finds the award of the Labour Court is not just and proper, atleast this Court can consider for modifying the punishment as compulsory retirement.

9. Heard the learned counsel for the petitioner and the learned counsel for the second respondent. Perused the materials placed before this Court.

10. The second respondent was working as Conductor in the petitioner Management. On 14.05.2009, he was issued with a charge memo. The charges are as follows:

“குற்றச்சாட்டுகள்

1) நீர், 01.04.2009 அன்று தடம் எண் 1 A/ல் பணிபுரிந்தபோது பணிமுடித்து 01.04.2009 அன்று மாலை 13.30 மணிக்குள் செலுத்தப்படவேண்டிய வசூல் தொகையை 02.04.2009 வரை செலுத்தாமல் இருந்துள்ளீர்.

2) கழக விதிமுறைகளை மீறியுள்ளீர்.

3) கழகப் பணத்தை தற்காலிகமாக கையாடல் செய்துள்ளீர்.

4) பணியில் ஒழுங்கீனமாகவும், முறைகேடாகவும் நடந்துகொண்டுள்ளீர்.”

11. The second respondent filed his explanation to the charges. Not being satisfied with the explanation, the Management conducted a domestic enquiry, where the Enquiry Officer found all the charges as proved. Consequently, the Management issued an order of termination on 20.07.2010, also by taking note of the past conduct of the second respondent, viz., 88 delinquencies committed by the second respondent and the punishment imposed thereon commencing from 12.10.1998 onwards. Since there was an industrial dispute pending before the concerned Authority at that time, the petitioner Management filed an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act and the said petition was allowed on 31.10.2010. It is seen that while granting such approval, the concerned Authority got satisfied that the domestic enquiry was conducted by following the principles of natural justice. The Labour Court has also taken the preliminary issue as to whether the disciplinary proceedings was conducted after giving due opportunity to the second respondent and by observing the principles of natural justice and found that the second respondent herein was granted sufficient opportunity before

imposing the punishment. Therefore, it is evident that there is no dispute to the fact that the domestic enquiry conducted against the second respondent was in order and in strict compliance of the principles of natural justice.

12. The Labour Court observed that the Management is also responsible in inducing the second respondent in committing the delinquency 64 items, since on each occasion, he was given only a lesser punishment. The Labour Court further observed that because of the lesser punishment imposed on all those occasions, the second respondent became habitual in committing the same offence repeatedly. After finding so, the Labour Court interfered with the punishment only on the reason that the learned counsel for the second respondent herein pleaded for lesser punishment by taking note of the family circumstances of the second respondent and also the fact that he was due to retire very shortly. Thus, the Labour Court set aside the order of dismissal and ordered reinstatement without backwages. In other words, the Labour Court modified the punishment of dismissal from service into the one of denying backwages alone.

13. Perusal of the impugned award though does not indicate anywhere that the Labour Court has inclined to interfere with the order of punishment by exercising its jurisdiction vested under Section 11A of the said Act, in effect, the interference by the Labour Court was made only by exercising its power under Section 11A of the said Act.

14. Section 11A of the said Act reads as follows:

"Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen:-

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the

materials on record and shall not take any fresh evidence in relation to the matter."

15. A careful perusal of the above disciplinary power vested on the Labour Court would show that an interference with the punishment imposed against the workman is called for only when the Labour Court is satisfied that the order of punishment was not justified. Therefore, it is evident that such satisfaction of the Labour Court is very much essential and foremost requirement, for the purpose of interfering with such punishment. Though the power conferred under Section 11A is wide, it is still a discretionary one and therefore, the same has to be exercised judicially as well as judiciously. Such satisfaction of the Labour Court must be reflected and supported by reasons recorded in the award itself. There is no question of making an inference of those reasons in the absence of specific findings and recording the same in the award while modifying the punishment. In other words, only when the punishment imposed by the Management is found to be unjustifiable, for the reasons so found and recorded, the Labour Court can interfere with the punishment. In this case, the Labour Court, except observing that it can show some leniency to the second respondent, by taking note of the submissions by his counsel, has not stated or observed anywhere in the award as to how and why the punishment imposed on the second respondent cannot be justified. At this juncture, it is relevant to be noted that Section 11A does not say that the punishment can be interfered with going by its proportionality alone. On the other hand, it clearly contemplates that the Labour Court must get satisfied that the order of discharge or dismissal was not justified. Satisfaction on the justification of the order of discharge or dismissal must be a reasoned and balanced one. Showing leniency alone cannot be the criteria for modifying the punishment. The Labour Court should look into the nature of charge proved against the workman, the punishment imposed for such misconduct as well as by considering the past conduct of the workman and then decide as to whether such punishment imposed on the workman is having justification or not.

16. Learned counsel for the petitioner relied on the decision of the Gujarat High Court made in Gujarat State Road Transport vs. Dhayabhai Lavjibhai Rohit dated 07.03.2005 in support of her contention that in the case of misappropriation, the Labour Court is not justified in exercising its power under section 11-A to modify the punishment of dismissal. She also relied on the above said decision to contend that once the act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for

sympathy and reinstating the employees in service. Paragraph No.4(iii) and paragraph No.6 of the said decision reads as follows:

"4.(iii) The Labour Court, Nadiad has held in its award that this is a case of simple negligence on the part of the respondent workman. This conclusion arrived at by the Labour Court is de hors the facts. There was a clear charge against the respondent workman that there was a re-writing and overwriting in CWA submitted by the respondent conductor and the amount which was not deposited with the petitioner Corporation was utilised by the respondent for his personal use. The charge is referred by the Labour Court while discussing issue No. 2. During the course of inquiry, the said charge has been accepted by the respondent workman. There are as many as 99 defaults of the respondent workman in past. The present default is a 100th default. These facts speak volumes about the misconduct of the respondent workman. The respondent workman was handling public money. Defaults and especially misappropriation ought to be punished adequately. This aspect of the matter has not been properly appreciated by the Labour Court. The amount misappropriated may be large or small. The punishment is not always for the amount misappropriated, but the punishment is for the nature of misconduct. The nature of misconduct, that is, misappropriation of the amount is grave in nature. Though the amount was collected from the passengers, the said amount was not deposited by the respondent workman with the petitioner Corporation. For this, the punishment of dismissal, awarded after holding a departmental inquiry was absolutely just and proper and in consonance with the nature of misconduct of the respondent workman. Interference therein by the Labour Court in exercise of powers under Section 11-A of the Industrial Disputes Act, 1947 by substituting the same by stoppage of two increments without any future effect is, in my opinion, an over-exercise of powers conferred upon the Labour Court. Too much leniency is not a proper exercise of powers, but if the punishment inflicted by the employer is in consonance with the misconduct, especially, when there is a misappropriation, the Labour Court ought to have refrained itself from interfering with the quantum of punishment, especially when this was the 100th default on the part of the respondent workman-conductor.

6. In the present case, it is apparent that the Labour Court has misdirected itself and has misplaced sympathy though the workman has committed grave

misconduct. He has designedly re-issued 15 used tickets. This would indicate that the workman had planned it in advance to collect the tickets from the passengers with a view to re-issue the same in the next trip. Not only this, but the workman in the present case has not issued tickets to the two passenger even though he had collected the fare from them. Further, he has not issued tickets to three passengers and lastly he has punched some tickets in such a manner so that they can be re-issued in subsequent trip. This conduct on the part of the workman establishes beyond any doubt that the act of the workman was pre-planned and well designed to misappropriate the Bus far amount. Apart from this aspect, there was no reason for the Labour Court to ignore the fact that the workman was involved in 44 default cases and on one occasion he was removed from service. In this view of the matter, in our view, the order passed by the Labour Court is on the face of it unreasonable and unjustified. The Labour Court ought to have held that in the facts and circumstances of the case, this was not a fit case for exercise of jurisdiction under Section 11A of the Act."

..6. In the present case also, the respondent workman has recovered the amount from passengers and has not deposited with the petitioner Corporation and therefore, quantum of punishment i.e. dismissed from service, awarded by the petitioner was absolutely just and adequate. It is also held by the Hon'ble Supreme Court in the case of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and Ors. v. Secretary, Sahakari Nourkarara Sangha and Ors. reported in MANU/SC/0591/2000 that once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. Relevant para-6 of the said judgment reads as under:

"6. As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25%

back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari). . In U.P. SRTC v. Basudeo Chaudhary this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs. 65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs. 2.35 but recovering @ Rs. 5.35 per head and also by making entry in the waybill as having received the amount of Rs. 2.35 which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation Ltd. v. Kala Singh this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held (at SCC pp.161-62, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty.""

17. The Gujarat High Court in the above decision found that the Labour Court therein has modified the punishment only by way of showing leniency towards the workman, while exercising the discretionary power under Section 11A.

18. Per contra, the learned counsel for the respondents relied on the decision of the Apex Court made in Palghat BPL & PSP Thozhilali Union and BPL India Ltd. & another (C.A.No.8384/1995) dated 07.09.1995 in support of his contention that the Labour Court has discretionary power under section 11-A of the said Act to consider the quantum of misconduct and the punishment and therefore, such discretion exercised by the Labour Court need not be interfered with by this Court. He further relied on the Division Bench decision of this Court made

in The Management of Tafe vs. R.Venkataraman and others (Writ Appeal No.7078/1983) dated 01.11.1989 to contend that once the power has been exercised by the Labour Court under Section 11-A of the Industrial Disputes Act, 1947, this Court under Article 226 of the Constitution of India should not undertake to re-examine the question of adequacy or inadequacy of the materials for interference by the Labour Court. He also relied on another Division Bench decision of this Court made in the case of The President, Cholan Pokkuvarathu Kazhagam, Madras vs. The Presiding Officer, Industrial Tribunal, Madras and another (Writ Appeal No.597/80) dated 22.08.1988 in support of the above contentions.

19. There is no quarrel or doubt with regard to the discretionary power vested on the Labour Court under section 11-A of the said Act. The question is as to how and under what circumstances such power has to be exercised. The discretionary power vested on the Labour Court cannot be exercised mechanically and the punishment be modified or altered without assigning any reason as to why the punishment imposed by the Management is unjustified. A discretionary power thus has to be exercised cautiously, judicially and judiciously. I have already pointed out that there is no finding rendered by the Labour Court as to how the punishment imposed on the workmen in this case is unjustified. On the other hand, the Labour Court has chosen to modify the punishment only based on sympathy. The Division Bench decision of this Court in The Management of Tafe case relied on by the learned counsel for the second respondent also observed that this Court under Article 226 of the Constitution of India should not undertake to re-examine the question of adequacy or inadequacy of the materials for interference by the Labour Court, when a power under section 11-A of the said Act has been exercised, only in the absence of any important legal principle. At paragraph No.3, the Division Bench has observed as follows:

"3. The well accepted principle on the question of exercise of powers under Section 11A of the Industrial Dispute Act, 1947, hereinafter referred to as the Act, to evaluate the gravity of misconduct for the purpose of the punishment to be imposed on a workman is, that once that power has been exercised, this Court under Article 226 of the Constitution of India, in the absence of any important legal principle, should not undertake to re-examine the question of adequacy or inadequacy of the materials for interference by Labour Courts."

Therefore, it is evident that there is no total bar for this Court to interfere against the award passed by the Labour Court in exercise of its discretionary power under section 11-A, in all cases. On the other hand, if this Court finds that the

important legal principle is either violated or not followed, while exercising such power by the Labour Court, this Court is empowered to re-examine the question of adequacy or inadequacy of the materials for the interference by the Labour Court.

20. Likewise, in the other Division Bench decision of this Court made in The President, Cholan Pokkuvarathu Kazhagam case relied on by the learned counsel for the second respondent, it is specifically observed that the Labour Court can differ from the findings rendered by the employer on the misconduct, only if a proper case is made out. Therefore, I find that the above decisions relied on by the learned counsel for the second respondent are not helping him in any manner.

21. The power conferred on the High Court under Article 226 of the Constitution of India is certainly superior power than that of the statutory discretionary power conferred on the Labour Court under Section 11A. Therefore, it is not right to contend that this Court while exercising the constitutional power is not empowered to interfere with the order of the Labour Court passed in exercise of such statutory power.

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.

23. Consideration of proportionality of punishment, no doubt, should be based on the assessment of the gravity of the misconduct. Such consideration is required, only when the past conduct of the delinquent is normal and does not carry any adverse impact. On the other hand, if the past conduct of the delinquent is of such nature showing his attitude and adamancy in continuing and repeating the misconduct of one nature or other, whether minor or major, which shocks the judicial

conscience, in my considered view, the theory of proportionality of punishment will have to take the back seat, thereby allowing the Management to sustain the discipline among the workers by sending a strong and firm message, like the punishment imposed on the petitioner. Therefore, interference with such punishment will not be in the interest of justice.

24. At this juncture, it is to be emphasized that utmost discipline is to be maintained in the work place and therefore, it is the duty of the Management to ensure maintenance of such discipline at all times. A misconduct committed as the first time may be a lapse. If it is repeated second time, it becomes a wrong. Committing the same misconduct third time is undoubtedly an offence, more particularly, when the workman has chosen to commit such misconduct again and again, even after suffering minor punishments on each occasions. The act of committing the repeated offence, though minor in nature, becomes a grave misconduct, certainly warranting major punishment. If one has not corrected himself despite suffering several minor punishments, his continued presence in the work place, would certainly shake the morale of the other employees.

25. It is not known as to why the Management has given such long rope to the second respondent in imposing the minor punishments, even though some of the delinquency committed such as short payment amounts to permanent misappropriation, are serious charges. Therefore, it is evident that the second respondent is not a fit person to continue in service. Accordingly, the Management has rightly taken a decision to dismiss him from service, which in my considered view, does not require any interference. Therefore, the Labour Court was not justified in interfering with such punishment.

26. In view of the above stated facts and circumstances, this Court is not convinced to accept the last submission made by the learned counsel for the second respondent for atleast modifying the punishment as one of compulsory retirement.

27. Thus, the moral of the story is that if one commits misconduct repeatedly and suffers only minor punishment for the same, let him not think that he will escape at all times and be aware that a major punishment awaits him, if he commits the same misconduct once again.

28. Accordingly, the writ petition is allowed and the impugned award is set aside and consequently, the punishment imposed by the Management against the second respondent is restored. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vri

To

The Presiding Officer,
I Additional Labour Court,
Vellore.

+lcc to Mr.S.J.Varadarajulu, Advocate Sr.5441

W.P.NO.37956 OF 2016

sv[co]
srg 21/02/2020



WEB COPY