

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.33741 of 2019
W.M.P.No.34222 of 2019

The General Manager
Tamil Nadu State Corporation
(Villupuram) Limited,
Zonal Office,
Chennai-Bangalore National Highways,
Ponnerikarai,
Kancheepuram.

... Petitioner

Versus

R.Chandrasekaran
Conductor Emp.No.CR61169,
State Transport Corporation,
Villupuram Limits,
Koyambedu Deport-1,
No.10, Vijayan Gopal Street,
Puthuvancheri Village,
Chennai-600 073.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the order dated 29.09.2016 passed by the Principal Labour Court, Chennai in I.D.No.230 of 2014 and to quash the same.

For Petitioner : Mr.C.S.K.Sathish

For Respondent : Mr.N.Beulah John Selvaraj

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O R D E R

This writ petition has been filed to call for the records relating to the order dated 29.09.2016 passed by the Principal Labour Court, Chennai in I.D.No.230 of 2014 and to quash the same.

2. The respondent was working as a Conductor in the petitioner/Transport Corporation. While so, on 14.02.2007, when he was in duty in the bus plying in the route from Chennai to Pondicherry, at Anumanthai Bus Stop, a checking squad entered into the bus. During checking, it was found that the respondent/employee collected a ticket fare of Rs.110/- from two passengers who traveled from Chennai to Pondicherry, but has not issued tickets to the passengers and attempted to misappropriate the ticket fare collected from the passengers. This was recorded by the Inspection Team and accordingly, a disciplinary proceedings was initiated against the respondent, whereas, the charge sheet dated 19.02.2007 was served on the respondent and the respondent also participated in the domestic enquiry conducted in this regard. After conducting domestic enquiry, a second show cause notice was given on 24.02.2009 to the respondent, for which, an explanation seems to have been given by the respondent and ultimately, the petitioner was not satisfied with the explanation given by the respondent. Thereafter, the writ petitioner, who is the Disciplinary Authority, has inflicted the punishment by passing an order dated 15/05/2010, whereby dismissed the respondent from service.

3. As against the said order of dismissal dated 15.05.2010, the respondent raised an Industrial Dispute in I.D.No.230 of 2014 on the file of the Principal Labour Court, Chennai. The Labour Court, after hearing both sides on the preliminary issue, raised a question as to whether the domestic enquiry was conducted fairly and properly. Ultimately, it was decided in favour of the employer (i.e.,) petitioner herein by order dated 29.09.2016. Insofar as the issue raised in the Industrial Dispute on the merits is concerned, the Labour Court after appreciating both sides contention and evidence, has come to the conclusion that the respondent is deserved to be punished. However, insofar as the proportionality of the punishment is concerned, the Labour Court was of the opinion that, the punishment of dismissal from service is disproportionate and accordingly, the Labour Court modified the punishment into withholding of two annual increments with cumulative effect. In the result, the Industrial Dispute was allowed in part, where the punishment of dismissal from service inflicted against the respondent was set aside and it was modified to withholding of two annual increments with cumulative effect and further, directed the employer to reinstate the petitioner with continuity of service with 50% backwages. Aggrieved over the above order passed by the Labour Court, dated 29.09.2016, the Management filed this petition with aforesaid prayer assailing the said impugned award.

4. Heard the learned counsel appearing for the petitioner/employer and the learned counsel appearing for the

respondent/employee.

5. Insofar as the first issue as to whether the domestic enquiry was conducted fairly and properly, it was decided in favour of the employer, therefore, there could be no quarrel on that issue.

6. However, on the second issue with regard to the merits of the Industrial Dispute is concerned, the Labour Court has gone into the facts and also recorded that the respondent/employee is liable to be punished. In this context, in the past 24 years of service, the petitioner had already given punishment to the respondent on 22 occasions. Out of 22 occasions, at least in nine occasions, the charge was with regard to shortage of collection amount. All these aspects having been considered by the Labour Court, however, it came to the conclusion that with regard to proportionality of punishment is concerned, the punishment of dismissal from service inflicted against the respondent was disproportionate. Accordingly, the Labour Court has come to the conclusion that the punishment is liable to be modified and hence, a modified punishment of withholding of two annual increments with cumulative effect was ordered and consequently, the employee was directed to be reinstated with continuity of service, of course, with only 50% of backwages.

7. Mr.C.S.K.Sathish, learned counsel appearing for the petitioner/Transport Corporation has submitted that, insofar as the domestic enquiry is concerned, it was found to be fair and therefore, there was no quarrel on that issue. The Labour Court, after going into the facts of the case, has come to the conclusion that the respondent/employee is deserved to be punished, however, only with regard to the proportionality of the punishment, the Labour Court has come to the conclusion that it was disproportionate.

8. In this context, the learned counsel appearing for the petitioner would submit that a decision reported in 2006-III-LLJ 967 in Uttar Pradesh State Road Transport Corporation vs. Suresh Pal was cited before Labour Court, however, the Labour Court, though accepted the principle, has distinguished the same on the ground that, in the said case, the conductor had not issued tickets to 20 passengers. Therefore, the maximum punishment of dismissal from service was inflicted and that was confirmed, whereas, in the present case, it is only for two passengers, the respondent/employee had not issued tickets after collecting the amount from the passengers, therefore, the said principle cited by the petitioner side, though have been accepted, was distinguished only with regard to proportionality of punishment. In this context, the learned counsel appearing for the petitioner would submit that, with regard to the proportionality

of punishment, the reasons cited by the Labour Court, that, if it is non-issuance of tickets to more passengers after collecting the amount, the employee can be dismissed, but if it is non-issuance of tickets only for two passengers after collecting the amount, only less punishment has to be given. The said logic is totally inappropriate and on that basis, the punishment of dismissal from service inflicted on the employee ought not to have been interfered with by the Labour Court. Therefore, the impugned order is liable to be interfered with.

9. However, the learned counsel appearing for the respondent/employee, by relying upon the averments made in the explanation given by the employee, has submitted that, the two passengers, who are in question, did not know Tamil language and because of the language problem, there was a delay in issuing the tickets. Therefore, the same should not be considered as if the employee intentionally was not issuing the tickets after collecting the amount. Therefore, the learned counsel for the respondent would submit that, the respondent is not at all liable to be punished. According to him, even the modified punishment of withholding two annual increments with cumulative effect itself is not correct, however, having accepted the same, the respondent has not filed appeal/writ petition. But at the same time, the employer/petitioner has moved this writ petition challenging the modified punishment. Hence, the said impugned order requires no interference from this Court.

10. I have considered all these submissions made on behalf of the learned counsel appearing for both sides and perused the materials on record.

11. In the reasoning paragraph of the impugned order, the Labour Court has stated as follows:

"16. On the other hand, the learned counsel for the respondent submitted that the petitioner had not issued tickets only with a view to misappropriate the money. The proper punishment for misappropriation is dismissal from service. He also submitted that Ex.W4 shows that the petitioner was punished 22 times for mis-conduct. Therefore, he prayed for confirming the punishment. He relied on the ruling reported in 2006-III-LLJ 967 in support of his contention.

2006-
III-LLJ 967-U.P. State Road Transport Corporation
vs. Suresh Pal- "Punishment-of dismissal of
conductor from

science-upon charges of not issuing tickets to 20
passengers-punishment, not disproportionate-Lesser
punishment would give wrong signal to others similarly
situated".

It is seen from this ruling that when the conductor was found to have not issued tickets to 20 passengers, it was held that the incumbent should be weeded out from service since he deals with public money in a fiduciary capacity.

17. It is seen from Ex.W1 charge that the petitioner was charged for not issuing tickets to two passengers after collecting the amount and failed to act as a responsible conductor. The petitioner was not charged with the allegation of misappropriating the amount. It is true that the petitioner has not issued tickets to two passengers after receiving the amount and that amount was found in his bag, thereby remaining an irresponsible conductor in performing his duties. Considering the charges against the petitioner that he acted only in an irresponsible way, this Court is of the considered view that punishment of dismissal for this irresponsible conduct is grossly disproportionate. It is seen from Ex.W4 that though the petitioner was cautioned and minor punishments were given on 22 occasions, at least on nine occasions, he was with shortage of collection amount. On those occasions, he was only mainly reprimanded and on some occasions, the grant of increment was postponed. It is seen from the evidence of RW1 that if there is a shortage in collection amount, that would be recovered from the salary of the conductor. Other misconducts were also minor in nature. Therefore, this Court is of the considered view that on the basis of those misconducts, the present charges cannot be decided. In the ruling referred above, the conductor was found to have not issued tickets to 20 passengers. Here, the petitioner had not issued tickets only to two passengers after collecting the amount. The petitioner is out of employment from 15.05.2010. Therefore, this Court is of the considered view that the punishment of dismissal for the charge of not issuing tickets after receiving the amounts irresponsibly is grossly disproportionate and therefore, this Court is of the considered view that the punishment of dismissal can be modified to that of withholding of two annual increments with cumulative effect. Accordingly, the punishment of dismissal ordered against the petitioner is set aside and the punishment is modified to that of withholding of two annual increments with cumulative effect. There is no evidence to show that the petitioner was gainfully employed during the non-employment period. The respondent is directed to reinstate the petitioner with continuity of service with 50% backwages. Thus, the points are answered. "

(emphasis supplied)

12. If look at the said reasoning given by the Labour Court where it has been stated that in the past 24 years of service, on 22 occasions, the respondent had been found guilty, out of which, atleast in nine occasions, it relates to shortage of collection of amount and it was further recorded by the Labour Court that, if there is a shortage in collecting the amount, that would be recovered from the salary of the conductor and the other misconducts are minor in nature, therefore, the Labour Court was of the considered view that, on the basis of those misconducts, the present charges cannot be decided.

13. In respect of the said finding given by the Labour Court, this Court does not have any different view as the Labour Court has taken a view that by taking into account the past conduct of the employee in earlier disciplinary proceedings, the employee's conduct in the present case, cannot be decided.

14. However, the Labour Court has went on further, stating that, in the case of Uttra Pradesh State Road Transport Corporation cited supra, on the side of the Management, it was a case where the conductor has not issued tickets to 20 passengers, after collecting the amount, whereas, in the present case, the respondent/conductor has not issued tickets only for two passengers, after collecting the amount, therefore, the proportionality issue has been decided by the Labour Court by stating that in that case 20 passengers were not issued tickets and in the present case, only two passengers were not issued tickets, therefore, the maximum punishment of dismissal from service cannot be imposed. Therefore, the Labour Court came to the conclusion that modified punishment can be given.

15. The said reasoning and the logic adopted by the Labour Court for modifying the punishment of dismissal from service into withholding only two annual increments with cumulative effect, in the considered view of this Court, cannot be accepted. In the case on hand, admittedly, the tickets were not issued to the passengers. Therefore, certainly on the part of the respondent/employee, there has been a guilt. Some explanation was given by the respondent/employee for non-issuance of tickets that he could not act upon immediately. Even accepting the explanation given by the respondent for non-issuance of tickets, the steps taken genuinely by the respondent thereafter is questionable and this Court finds that, for such a long time (crossing nine stages), a conductor was silent without giving tickets after collecting the amount from the passengers. Therefore, the respondent/employee had been clearly intending for misappropriating the money by non-issuance of tickets.

16. Now the only question is, whether the respondent is liable to be inflicted with the punishment of dismissal from service or not?

17. In the case on hand, the respondent/employee was in service prior to the order of dismissal, for nearly 24 years. After surviving 24 years, of course on the proved charges, if the respondent/employee is inflicted with the punishment to the extent of dismissal from service, he would go to home with empty hands. Absolutely there is a guilt, therefore, the respondent is liable to be punished. However, at the same time, long service of 24 years rendered by the respondent/employee must also be taken into account, whereas, at the end of 24 years, the respondent cannot be sent with an empty hands.

18. Only on this aspect, this Court is unable to accept with the Labour Court order, which is impugned herein and thus, this Court is inclined to modify the punishment from the original punishment of dismissal from service, of course, by enhancing the modified punishment given by the Labour Court through the impugned award. Accordingly, this Court feels that, the respondent/employee is deserved to be punished as this kind of employee with guilt of misappropriation cannot be permitted to continue in service. But, at the same time, his long service prior to the dismissal of service (i.e.,) 24 years cannot be simply brushed aside without giving any monetary and service benefits to the respondent/employee.

19. In view of the aforesaid facts, this Court feel that the original punishment given by the Disciplinary Authority (i.e.,) dismissal from service against the respondent can be modified into compulsory retirement which would serve the purpose and therefore, accordingly, the impugned award is liable to be modified suitably. In the result, the following orders are passed:

(i) the impugned order dated 29.09.2016 in I.D.No.230 of 2014 is hereby modified to the following effect.

(ii) that the respondent/employee shall be inflicted with the punishment of compulsory retirement with effect from 15.05.2010, that is, the date on which the punishment of dismissal from service has been imposed against him. Consequently, the respondent/employee shall be entitled to get service benefits as applicable. Accordingly, the Transport Corporation shall calculate the service benefits payable to the respondent/employee, taking into account the modified punishment of compulsory retirement imposed against him with effect from

15.05.2010 and disburse the same within a period of three months from the date of receipt of a copy of this Order.

20. With these observations and directions with modification of the impugned award, this writ petition is ordered. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

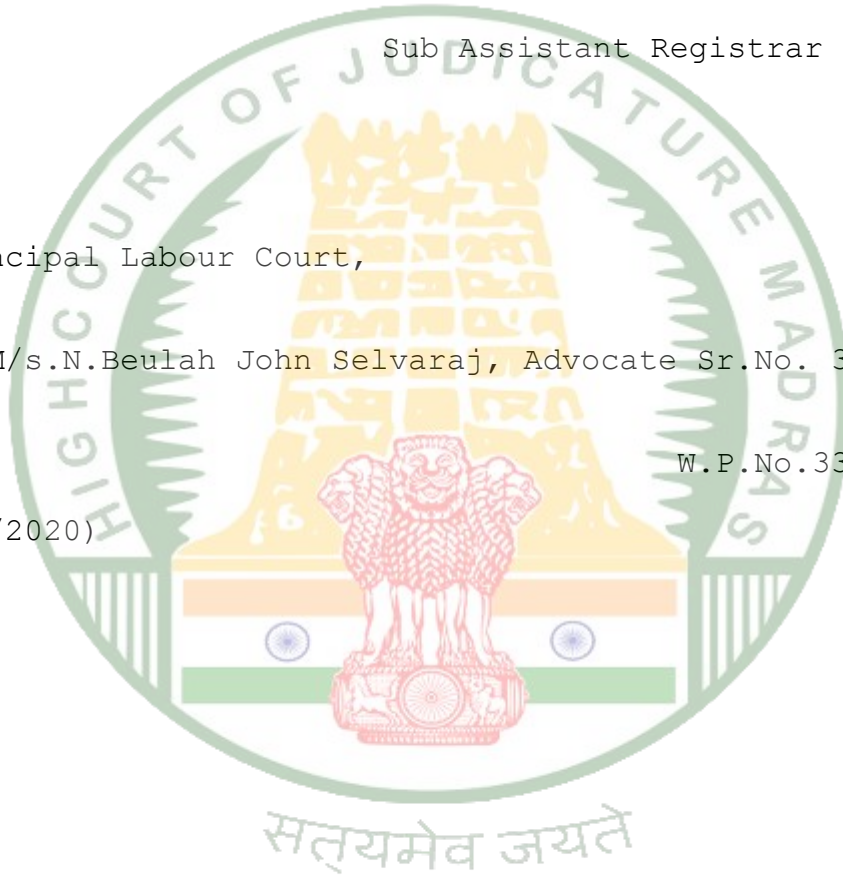
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To
1.The Principal Labour Court,
Chennai.

+1 cc to M/s.N.Beulah John Selvaraj, Advocate Sr.No. 32684

W.P.No.33741 of 2019

PVS (CO)
RMP (24/11/2020)



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