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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.12556 of 2004

S.Elangovan

...Petitioner

Vs

1.The Presiding Officer,
Labour Court, Salem.

2.The Management of State Transport
Corporation Ltd,
Division - 2,
Bharathipuram, Dharmapuri - 5.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, Calling for the records relating to the award dated 13.02.2003 in I.D.No.881 of 1998 passed by the 1st respondent herein; to quash the same; and, to consequently direct the 2nd respondent herein to reinstate the petitioner with continuity of service, back-wages and all other attendant benefits.

For Petitioner	:	Mr.K.Elango
For R2	:	Mr.D.Raghu,
		Standing Counsel
R1	:	Court

ORDER

The petitioner herein, while serving as a Conductor in the second respondent's Corporation, was leveled with charges to the effect that there was excess money in his cash bag, when he was checked by the Checking Inspector/MW1 and also that he had failed to issue tickets to 8 passengers. Ultimately, the petitioner was dismissed from services on 09.09.1997, which was challenged before the Labour Court in ID.No.881 of 1998 and through the impugned award dated 13.02.2003, the Labour Court had confirmed the punishment and thereby dismissed the industrial dispute.

2. The learned counsel for the petitioner drew attention of this Court to the evidence of MW1 and PW1 to substantiate that the 8 passengers were ultimately issued with the tickets



and also that the petitioner herein, in his deposition, had given reasons for the excess cash that was found in his cash bag. The learned counsel submitted that the findings of the Labour Court that the petitioner had not let in oral evidences for explaining the excess baggage, is factually incorrect. It is also his submission that since there are sufficient evidences to substantiate that all the 8 passengers were given their respective tickets, the charges itself could not be sustained.

3. Per contra, the learned Standing Counsel appearing for the second respondent/Corporation reiterated the findings of the Labour Court and submitted that the charges are serious in nature and therefore, the punishment of dismissal was proportionate to the leveled charges. The learned counsel also submitted that the petitioner was involved in similar incidents earlier.

4. A perusal of the deposition of MW1 would reveal that the Deputy Inspector had, in his cross examination, admitted that the 8 passengers who had boarded at Uthangarai, were in possession of the tickets. As such, the very basis of one of the charges that the petitioner herein had not issued tickets to these 8 passengers, seems unfounded. Likewise, the evidence of the petitioner/PW1 also reveals that the petitioner had given his explanation for the excess cash found in his bag. As per the evidences, the petitioner had stated that the excess cash was the change that the petitioner intended to give to the concerned passengers and that he had also explained the same to the concerned Checking Inspector at the relevant point of time.

5. However, the Labour Court, in paragraph 10 of the award, had made an observation that the petitioner herein had not given his explanation during the time of trial. This finding, apparently, is a factual error. When the petitioner herein had given some explanation with regard to the reason for excess cash found in his bag, there is a duty cast on the Labour Court to deal with such a statement. As such, the ultimate finding that the order of dismissal was correctly made, requires interference.

6. In normal circumstances, whenever there is a factual mistake committed in the award, this Court would remit the matter back for reconsideration. However, in this case, the petitioner herein has reached the age of superannuation in the month of July, 2015 itself. While that being so, sending the matter back to the Labour Court for reconsideration would cause serious prejudice to the petitioner, who is now aged about 63 years. In this background, this Court is of the view that the punishment imposed on the petitioner herein could be set aside and the back wages could be restricted to 25%, with continuity of service.



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7. Insofar as the antecedence are concerned, though the respondent Corporation had taken a stand that the petitioner herein was involved in similar charges earlier, no records were produced before the Labour Court to substantiate such an aspect. As such, such an allegation without evidences, cannot be substantiated.

8. In the light of the above observations, the impugned award dated 13.02.2003 passed in I.D.No.881 of 1998, as well as the dismissal order dated 09.09.1997 are quashed. Consequently, the petitioner herein is directed to be reinstated back into service, for the purpose of calculating his service and monetary benefits. The second respondent herein shall pay 25% of the back wages due to the petitioner by extending service and all other monetary benefits. Such an exercise shall be completed atleast within a period of six weeks from the date of receipt of a copy of this order.

9. The Writ Petition stands allowed, accordingly. No costs.

Sd/-
Assistant Registrar (CS-VII)

// True Copy //

Sub Assistant Registrar

hvk/drm

To

1.The Presiding Officer,
Labour Court,
Salem.

2.The Management of State Transport
Corporation Ltd,
Division - 2,
Bharathipuram,
Dharmapuri - 5.

+1cc to Mr.K.Elango, Advocate SR.No.44805

W.P.No.12556 of 2004

PL(CO)
RVM(06/10/2021)