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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.1701 OF 2004

A.Rajendran (deceased)

P.Manjula

R.Surya

R.Manikandan

R.Sathya

(P2 to P5 are substituted as LR's of the deceased

P1 vide order dated 09.04.2019 made in

WMP No.11204/2019 in WP No.1701/2004)

.. Petitioners

Versus

1. The Presiding Officer

Labour Court

Tiruchirappalli.

2. The Management

Tamil Nadu State Transport

Corporation Ltd.,

(Kumbakonam Division - 2)

Periyamilaguparai,

Tiruchirappalli District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the award of the 1st respondent made in I.D.No.90 of 1999 dated 29.09.2003 and quash the same and consequently direct the 2nd respondent to reinstate the petitioner into the services with backwages and all attendant benefits.

For Petitioners : Mr.Prakash Goklaney
for M/s.S.Giritharan

For Respondent-2 : Mr.D.Venkatachalam



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O R D E R

Challenging the order of the Labour Court, dismissing the claim petition, the employee has preferred the above writ petition.

2. According to the petitioners, the award of the Labour Court is perverse and illegal, for, that has not considered the documents marked before it in proper perspective and arrived at an erroneous conclusion. According to the him, he has filed the enquiry proceedings vide Ex.W7, enquiry report - Ex.W8. The enquiry report ex facie would show that only one witness was examined on the side of the Management. On the other hand, the charges against the petitioner was that he has failed to issue tickets to the passengers and thrown it on the floor. The Checking Inspector has prepared a report and the petitioner refused to receive the same. But it was acknowledged by the Driver of the bus. Unfortunately, neither the Driver nor the passenger from whom the statement was obtained were examined as witnesses. This was not at all considered by the Labour Court. Apart from that, there is no conclusive proof to show that the tickets were taken from the ticket book. But it was stated that it was taken from the floor outside the bus. The allegation was that it was thrown by the petitioner. But there was no evidence to prove that it was thrown by him with an attempt to escape from the disciplinary action. The evidence of the Management witness is a self serving evidence because he wanted to support his own statement. Other than that, neither the Driver nor the passenger who are independent witnesses were examined. The torn off tickets by itself would not prove that those were not issued to the passengers. Unless the passenger to whom the ticket was issued was examined, the real fact could not have been elicited. Therefore, the Labour Court, ought to have found that the charge was not proved. On the other hand, the Labour Court has mechanically reproduced whatever stated by the Enquiry Officer and has held the charges as proved. Therefore, the learned counsel for the petitioner would vehemently contend that the finding of the Labour Court is perverse and based on no evidence.

3. In so far as the punishment is concerned, it is crystal clear that there is no allegation as to the intention of the petitioner to misappropriate the amount of Rs.5/-. But it is an admitted case that before the stage could be completed and even before the entries could be made, the Checking Inspectors have entered the bus and seized the ticket book and the cash bag. Therefore, it is clear that there was no opportunity to the writ petitioner to complete the invoices. Therefore, the finding of the Labour Court that the charges were proved and the petitioner deserves the punishment of termination is also based



on presumption and it is not supported by any legal evidence. Therefore, the learned counsel for the petitioner would seek to set aside the punishment.

4.The learned counsel for the second respondent would vehemently contend that the Labour Court has rightly held that the charges were proved and considering the past record of service, wherein the petitioner has suffered more than 20 punishments, confirmed the punishment of termination and therefore, the award of the Labour Court need not be interfered.

5.I have considered the submissions made on either side and perused the materials available on record.

6.The Labour Court award reiterates the averments made by the second respondent / Management as well as the report filed by the Enquiry Officer. The Labour Court has not considered that there was no evidence substantiating the charges through oral evidence of the passenger or Driver. The Labour Court has failed to consider that there is no evidence from the passenger on whose instance the complaint was made and based on whose statement, the charges were framed, was not examined. Further, it was stated that the petitioner has refused to receive the defect memo was established by the signature of the Driver. But the Driver was also not examined. In that event, it should be construed that the charges were not proved. As contended by the petitioner, the relevant witnesses were not examined to prove the charges and the factum that the petitioner has torn off the tickets from the ticket book in order to escape from the misconduct was also not proved by evidence. Therefore, the finding of the Labour Court in holding the charges proved is perverse, based on no evidence and hence, not sustainable. Accordingly, the finding of the Labour Court in respect of the proportionality of the punishment is set aside.

7.It is submitted before this Court that the petitioner has attained the age of superannuation in the year 2009 and he died on 01.05.2017. It is only the legal representatives of the deceased worker are pursuing this case.

8.At the time of filing claim petition, the deceased petitioner was drawing a salary of Rs.4300/- per month. However, this Court computed the salary for the remaining period of service, from the date of dismissal till the date of superannuation at Rs.5,63,600/-. It goes without saying that during this period he would have earned increments and got the benefit of wage revision and earned more. Therefore, considering the facts and circumstances of the case, the award of punishment is set aside and it is modified into one of payment of



compensation of Rs.4,00,000/- (Rupees Four Lakhs Only). The second respondent / Management is directed to pay compensation to the petitioners within a period of four weeks from the date of receipt of a copy of this order.

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costs.

9. In fine, the Writ Petition is partly allowed. No

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Presiding Officer
Labour Court
Tiruchirappalli.

2. The Management
Tamil Nadu State Transport
Corporation Ltd.,
(Kumbakonam Division - 2)
Periyamilaguparai, Tiruchirappalli District.

+lcc to Mr.D.Venkatachalam, Advocate, S.R.No.21718

+lcc to M/s.S.Giritharan, Advocate, S.R.No.21589

WP NO.1701 OF 2004

PMK(CO)
BE(23/07/2021)