



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition (MD)No.11065 of 2010

1.K.G.Subramanian (died)
2.S.Shanthi
3.S.Dinesh
4.S.Rajesh
(P2 to P4 are substituted as LR's. of the deceased P1
vide order dated 24.10.2019 made in W.M.P.(MD).No.10024 of 2017 in
W.P.(MD).No.11065 of 2010)

... Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Cuddalore,
Tanjore Camp.

2.The Management of
Tamil Nadu State Transport Corporation (Kumbakonam)Limited,
Kumbakonam Region,
represented by its Managing Director,
Kumbakonam.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records from the first respondent Labour Court relating to the award dated 04.07.2007 in I.D.No.53 of 2003 of the first respondent, quash the same and consequently to direct the second respondent to reinstate the petitioner in service with back wages, continuity of service and all other attendant benefits and award cost.

For Petitioners : Mr.S.Arunachalam

For R2 : Mr.S.Baskaran
Standing counsel

O R D E R

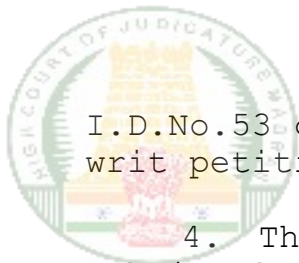
This writ petition has been filed challenging the award passed by the Labour Court in I.D.No.53 of 2003, dated 04.07.2007 and to quash the same and consequently direct the second respondent to reinstate the petitioner into service with back wages, continuity of



service and all other attendant benefits.

2. During the pendency of this writ petition, the petitioner/workman died and his legal heirs are impleaded as parties to represent the case of the petitioner. The case of the petitioner is that he was appointed as conductor in the second respondent Corporation on 10.04.1983 and thereafter, he was promoted as Senior Conductor. On 07.07.1998, he was working in a bus bearing Registration No.TN 49 N 0765, which was running between Kumbakonam and Trichy and at Kumbakonam, totally 79 passengers boarded in the bus. Since there was a crowd of passengers, he was able to issue tickets to the passengers, who boarded into the bus at Kumbakonam only, when the bus reached at Papanasam, which was the fourth fare stage from Kumbakonam. One passenger boarded into the bus at Swamimalai and another one boarded into the bus at Valapalakadai had also been issued with tickets by the petitioner only thereafter. While so, two tickets remained unsold, but the subsequent tickets to them were sold. The reason for the remaining two tickets in one page of the ticket book is that he failed to note the same, when he was issuing tickets to the passengers. Two passengers, who boarded at Papanasam, asked tickets to go to Tanjore old bus stand and the petitioner has issued two tickets by writing the fare amount of Rs.5/- to travel to Tanjore old bus stand from Papanasam.

3. It is the further case of the petitioner that after 7 k.m. from Papanasam, the bus was stopped at Ayyampatti and two Checking Inspectors boarded into the bus and they checked all the passengers. While so, the above said two passengers gave their tickets to the Checking Inspectors and they found that the tickets were sold to the passengers, who were traveling from Papanasam to Tanjore old bus stand, but the subsequent tickets to the two tickets were sold to the passengers, who boarded into the bus at Kumbakonam. Thereafter, they enquired the petitioner and he has also given his explanation. But the Checking Inspectors did not accept his explanation and two months thereafter, a charge memo was issued against him alleging that after collecting Rs.10/- from two passengers, who boarded into the bus at Papanasam to go to Tanjore Old Bus Stand, he issued the tickets, which were already sold to the passengers, who boarded at Kumbakonam to travel to Ayyampettai. The petitioner has given his reply to the said charge memo on 21.09.1998 and the second respondent, without considering the same, ordered for domestic enquiry. After conducting enquiry, the Enquiry Officer has given his report date 04.11.1998, holding that the charges were proved against the petitioner. Based on the enquiry report, the second respondent has imposed the punishment of dismissal from service on 06.03.1999. Thereafter, the petitioner made several appeals to the second respondent. But they were rejected and hence, the petitioner has raised an Industrial Dispute in I.D.No.53 of 2003 before the Labour Court, Cuddalore, under Section 2(A) of the I.D. Act. After hearing the arguments of both sides, the Labour Court has dismissed the



I.D.No.53 of 2003, on 04.07.2007. Aggrieved by the same, the present writ petition has been filed.

4. The learned counsel appearing for the petitioners would submit that the deceased has filed an I.D.No.53 of 2003 before the Labour Court, Cuddlore, under Section 11(A) of the Industrial Disputes Act. However, the Labour Court, without conducting a detailed enquiry by examining the passengers, who were received the tickets and the Checking Inspectors, dismissed the I.D.No.53 of 2003. But, in the present case, before the Enquiry Officer as well as the Labour Court, one Checking Inspector was examined and no other witness was examined, besides interested witnesses. The Enquiry Officer as well as the Labour Court arrived at a conclusion as if the petitioner has misappropriated the second respondent Corporation amount by reselling the tickets, which were already sold to the passengers. In the present case, the two passengers, who were already purchased the tickets were not examined and the two passengers, who were subsequently purchased the tickets were also not examined. In the absence of examining the crucial witnesses, imposing the major punishment is unwanted and hence, he prayed for allowing the writ petition.

5. The learned Standing counsel appearing for the second respondent Corporation would submit that in the present case, the Checking Inspector, who checked the invoices possessed by the deceased petitioner was examined before the Enquiry Officer as well as the Labour Court and in his evidence, he clearly deposed that the tickets, which were already issued at Kumbakonam, were again re-issued to the passengers, who are boarded at Papanasam and Valapalakadai. Hence, he prayed for dismissal of this writ petition.

6. Heard the learned counsel for the petitioner, learned Standing counsel for the second respondent Corporation and perused the materials available on record.

7. Admittedly, the petitioner is working as a Conductor in a bus bearing Registration No.TN 49 N 0765, which was running between Kumbakonam and Trichy. The main allegation against the petitioner is that he issued two tickets to two passengers, who were boarded at Kumbakonam and the very same tickets were re-issued to the passengers, who were boarded at Papanasam and Valapalakadai. However, in order to substantiate the same, the two passengers, who were originally purchased the tickets were not examined and even the passengers, who were subsequently purchased the tickets at Papanasam and Valapalakadai also not examined. In the absence of examining the said witnesses, merely based on the evidence of interested witness viz., Checking Inspector, the Enquiry Officer has arrived at a conclusion, which was also confirmed by the Labour Court and the same is not sustainable one. Though the Checking Inspector has given a written complaint to the second respondent Corporation, he failed



to record any statement or failed to take any steps to record the statement of passengers, who were purchased the tickets from the petitioner and without any statements, based on the evidence of the Management witness, a domestic enquiry was conducted against the petitioner and the same was confirmed by the Labour Court. However, in the present case, we cannot expect that all the passengers come forward to give their statements and they are interested only to travel in the bus by paying the fair amount. Admittedly, the two tickets were sold and subsequently the same two tickets were resold to the passengers, who were boarded at Papanasam and Valapalakadai.

8. A perusal of the evidence of P.W.1 reveals that the Ticket Nos.65404 and 65405 were written by ink pen and the said tickets, which were issued at Kumbakonam, were again re-issued at Papanasam and Valapalakadai. Further, the petitioner has also given a detailed explanation and on perusal of his explanation, which was marked as Ex.M.13 and on perusal of the same, the petitioner himself admitted that all the tickets were sold and after selling the entire tickets, when the petitioner prepared the invoice, Papanasam also reached and he found that two tickets were not sold and the said tickets were sold subsequently to the passengers, who were boarded at Papanasam and Valapalakadai. Further, the carbon copy was not properly fixed in the ticket book, for which the amount mentioned in the original ticket was not entered in the carbon copy of the book. Hence, the petitioner re-write in the carbon copy of the book, for which, the petitioner is not responsible and there is no loss caused to the Corporation. Admittedly, the petitioner's cash bag was checked and the Checking Inspector found that there was a deficiency of Rs.25.15/-. Further, the petitioner himself has admitted the guilt and the punishment imposed by the disciplinary authority as well as the appellate authority is highly excessive, when the petitioner himself has accepted his mistake in his reply.

9. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

10. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In **Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are



proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

11. This Court, keeping in mind the ratio laid down by the Hon'ble Apex Court in relation to interfering with the punishment imposed by the disciplinary authority, would now proceed to dissect the materials available on record to find out whether the punishment imposed on the petitioner is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court requiring interference.

12. The short issue is whether the said delinquency warrants the punishment of dismissal from service. In the fitness of things, this Court is of the considered view that the punishment imposed on the petitioner should be modified to one of compulsory retirement.

13. In the light of the above, the punishment imposed on the petitioner is modified from one of dismissal from service to one of compulsory retirement and the petitioner's legal heirs are entitled to receive the monetary benefits payable to the petitioner as a result of the modification of the punishment. The second respondent Management is directed to calculate the monetary benefits and pay the same to the legal heirs within a period of twelve weeks from the

<https://hccservices.ecourts.gov.in/hccservices> of a copy of this order.



14. With the above modification, this Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Presiding Officer,
Labour Court,
Cuddalore,
Tanjore Camp.

2.The Management of
Tamil Nadu State Transport Corporation (Kumbakonam)
Limited, Kumbakonam Region,
represented by its Managing Director, Kumbakonam.

+1 CC to M/s.S.BASKARAN, Advocate (SR-475[F] dated 07/01/2021)

Writ Petition (MD)No.11065 of 2010

07.01.2021

(TP)CO

AP(01/02/2021) 6P 4C