



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD) No.11515 of 2010

and

M.P. (MD) No.1 of 2010

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The Management,
Tamil Nadu State Transport Corporation,
(Madurai Division-1),
Bye-Pass Road,
Madurai-10.

... Petitioner

Vs.

1.N.Karunakaran

2.The Presiding Officer,
Labour Court,
Madurai.

... Respondents

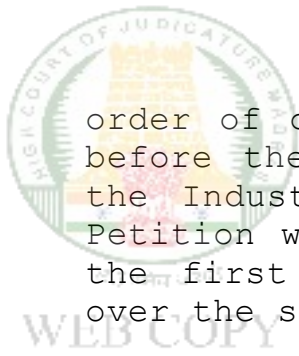
Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the Labour Judge, Madurai, in I.D.No.32 of 2001 dated 04.02.2009 and quash the same as illegal and invalid.

For Petitioner : Mr.M.Prakash

For Respondent : Mr.S.Arunachalam for R1

ORDER

The case of the petitioner is that the first respondent was employed as Conductor in the petitioner/Corporation. While he was on duty on 20.09.1998 from Theni to Rameswaram in the bus bearing registration No.TN-58-N-246 collected ticket fare of Rs.21/- from one passenger for Madurai Teppakulam to Ramanathapuram stage and issued a ticket for Rs.14.25 paise to the stage of Madurai to Paramakudi. When the Inspector checked the invoice with passengers and tickets, it was found that the first respondent misappropriated Rs.6.75 paise. The passenger in the bus had witnessed the same and gave a statement in writing. The petitioner/corporation conducted enquiry and the charges were proved against the first respondent. Hence, the first respondent was dismissed from service on 23.02.2020. Aggrieved over the



order of dismissal, the first respondent filed I.D.No.32 of 2011 before the learned Labour Court, Madurai under Section 2(a)2 of the Industrial Dispute Act, 1947. The said Industrial Dispute Petition was allowed and the petitioner was directed to reinstate the first respondent in service without backwages. Aggrieved over the same, this writ petition has been filed.

2.The learned counsel for the petitioner submitted that the first respondent himself pleaded guilty before the Enquiry Officer and inadvertently, he had given lesser value ticket to the passengers. It shows that the guilt is committed by the first respondent. The first respondent was punished more than 21 times for the very same charge. The first respondent was suspended from service for a period of 30 days for the very same offence on 29.02.1996 also. In the present case, the first respondent himself admitted his guilt before the enquiry officer and the same was confirmed by the Labour Court. However, the learned Labour Court set aside the order of termination. Hence, the learned counsel for the petitioner prays this Court to set aside the order of the Labour Court.

3.The learned counsel appearing for the first respondent would submit that he served 23 years in the petitioner/Corporation. The termination order passed by the petitioner was dismissed and the Labour Court after carefully considering the evidence, reinstated him in service without backwages. Hence, the order of the Labour Court is null and void and it does not warrant any interference.

4.Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the first respondent and perused the materials placed before this Court.

5.The bus bearing registration No.TN-58-N-246 belonging to the Corporation was on its trip from Madurai Teppakulam to Ramanathapuram on 20.09.1998. When the bus crossed Chanthirekudi entrance, the checking inspector boarded the bus. At that time, 42 passengers were travelling in the bus but 41 passengers were entered in ticket book and invoice. It is seen that first respondent collected a sum of Rs.21 and issued ticket only for a sum of Rs.14.25 and he misappropriated a sum of Rs.6.75. The passenger had witnessed the same and gave a written complaint to that effect. Hence, the first respondent was issued with charge memo. The first respondent offered his explanation on 28.10.1998 and the same was not accepted, an enquiry was conducted and the first respondent was dismissed from service on 23.02.2020. Questioning the same, the first respondent filed I.D.No.32 of 2011 before the Labour Court, Madurai.



6. Before the Labour Court, there is no witness on behalf of the petitioner as well as the respondent. 16 documents were marked on side of the petitioner/Corporation and no documents is marked on the side of the first respondent/workman.

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7. On above backgrounds, this leads this Court to the next question as to whether the Labour Court would be justified in exercising its discretion under Section 2(a)(2) of the Industrial Disputes Act, 1947 had held that the charges are proved. However, the Labour Court modified the punishment of dismissal imposed by the petitioner/Corporation. While considering the scope of judicial review in respect of a punishment imposed by the disciplinary authority and subsequently modified by the Labour Court, it has been now well settled by the judgment of the Supreme Court in **Government of India and another v. George Philip, AIR 2007 SC 705**, where the Supreme Court, in paragraph-9 of the judgment, has held as follows:-

"9. It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non-compliance of the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge."

8. In fact in the above judgment, the Supreme Court had quoted with approval the following judgments in **B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749; Om Kumar v. Union of India, (2001) 2 SCC 386 and Damoh Panna Sagar Rural Regional Bank & another v. Munna Lal Jain, (2005) 10 SCC 84**.

9. In **U.P. State Road Transport Corporation v. Mohan Lal Gupta and others, (2000) 9 SCC 521**, the Supreme Court has held that the question of award of any minor punishment in the facts of that case does not and cannot arise and neither Labour Court could alter punishment of termination having regard to its assessment of facts and contentions as regards validity of the inquiry proceedings. The employee has been found guilty of misappropriation and in such an event, if the appellant



Corporation loses its confidence vis-a-vis the employees, it will neither be proper nor fair on the part of the Court to substitute the findings and confidence of the employer with that of its own by allowing reinstatement. The misconduct stands proved and in such a situation by reason of gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment. In **Bharat Heavy Electricals Limited v. M.Chandrasekhar Reddy and others, (2005) 2 SCC 481**, the Supreme Court, while quoting the above judgment with approval, has held that the Labour Court has no unlimited jurisdiction under Section 2(a)(2). The Labour Court has no power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof.

10. In **South Indian Cashew Factories Workers' Union v. Kerala State Cashew Development Corporation Ltd., and others, (2006) 5 SCC 201**, the Supreme Court has held that if the enquiry is fair and proper then, in the absence of any allegations of victimization or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed.

11. A careful reading of the above judgments of the Supreme Court would go to show that in exercise of the power under Section 2(a)(2), the Labour Court could not interfere with the imposition of punishment, unless the punishment is shockingly disproportionate to the gravamen of the charges. In fact in **Damoh Panna Sagar Rural Regional Bank case (supra)**, the Supreme Court has observed that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic and moral standards. The Supreme Court has also held in that judgment that the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator and the scope of judicial review is limited to the deficiency in decision-making process and not the decision as such.

12. The Supreme Court in **Regional Manager, RSRTC v. Ghanshyam Sharma, (2002) 10 SCC 330** has held that when the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal. On the facts of that case, the Supreme Court held that the Labour Court was not justified in interfering with the punishment of dismissal and should not have ordered reinstatement with continuity of service, but without backwages. Though under Section 2(a)(2) the Labour



Court has jurisdiction and powers to interfere with the quantum of punishment, however, the discretion has to be used judiciously.

13. On consideration of the various materials, ultimately the Labour Court found that the charges are proved. However, it held that the punishment of dismissal was too harsh and therefore, modified the said punishment into one of reinstatement without backages. Aggrieved over the same, this writ petition has been filed.

14. In this context, we may also refer to the following judgments of the Supreme Court. In **Mahindra and Mahindra Ltd., v. N.B.Narawade, (2005) 3 SCC 134**, the Supreme Court, while considering the discretion of the Labour Court under Section 2(a) (2) to interfere with the punishment, has held that the said discretion is certainly not unlimited, but could be exercised only in the following circumstances, namely, (i) when the punishment being so disproportionate to gravity of misconduct so as to disturb conscience of court, or (ii) existence of any mitigating circumstances which require reduction of the sentence, or (iii) past conduct of workman which may persuade Labour Court to reduce punishment. In **M.P.Electricity Board v. Jagdish Chandra Sharma, (2005) 3 SCC 401**, the Supreme Court, while quoting with approval the judgment in Mahindra and Mahindra Ltd. case, has held that the Court/Tribunal cannot interfere with quantum of punishment based on irrational or extraneous factors and certainly not on a compassionate ground and the said jurisdiction is not to be exercised capriciously or arbitrarily.

15. Further, a learned single Judge of this Court in the judgment in **Management, Dheeran Chinnamalai Transport Corporation Ltd., v. Presiding Officer, Labour Court, 2002 (95) FLR 1031**, has held that in the absence of adequate and acceptable reasons, the Labour Court has no power to reduce the punishment. In fact in the said judgment, the learned single Judge had quoted a Division Bench judgment of this Court in **Sri Gopalakrishna Mill P.Ltd. v. Labour Court, 1980 (1) LLJ 425**, where the Division Bench held as follows:-

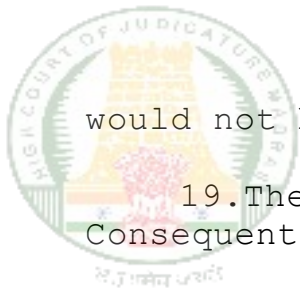
"When a workman is charged for a serious misconduct as in this case, one cannot go by the number of years of service put in by the workman or by the workman or by his age or by his married or unmarried status. If an unmarried worker is entitled to seek lenience in the matter of punishment as has been held by the Labour Court, a worker who is married and has children to support is equally entitled to claim leniency. This will lead to a situation that all workmen whether married or unmarried can claim leniency."



16. Another Division Bench of this Court, in **Pandiyan Roadways Corporation Ltd. v. Employee P.Murugesan, (2002) 3 LLN 570**, held that misconduct amounting to misappropriation of ticket fare cannot be considered as minor misconduct and in that event power exercised by the Labour Court to modify the punishment, without acceptable reasons, cannot be sustained. The above judgment was quoted with approval by another Division Bench, in **N.Mylsamy, Pollachi and another v. Cheran Transport Corporation Limited and another, 2004 (101) FLR 963**, where the Division Bench held that the exercise of discretion by the Labour Court is not automatic, but should be exercised with sufficient reasons.

17. Keeping the above judgments in mind, the facts of the present case should be looked into. The first respondent was employed as Conductor in the petitioner/Corporation. While he was on duty on 20.09.1998 from Madurai to Rameswaram in the bus bearing registration No.TN-58-N-246 collected ticket fare of Rs.21/- from one passenger for Madurai Teppakulam to Ramanathapuram stage and issued a ticket for Rs.14.25 paisa to the stage of Madurai to Paramakudi. When the Inspector checked the invoice with passengers and tickets, it was found that the first respondent misappropriated Rs.6.75 paisa. The passenger in the bus had witnessed the same and gave a statement in writing. The petitioner/corporation conducted enquiry and the charges were proved against the first respondent. Hence, the first respondent was dismissed from service on 23.02.2020. Aggrieved over the order of dismissal, the first respondent filed I.D.No.32 of 2011 before the learned Labour Court, Madurai under Section 2(a)2 of the Industrial Dispute Act, 1947. The said Industrial Dispute Petition was allowed and the petitioner was directed to reinstate the first respondent in service without backwages. Challenging the same, this writ petition came to be filed.

18. This Court is of the opinion that though the first respondent rendered his service in the petitioner/Corporation for a period of 23 years, he admitted his guilt before the enquiry officer and he had been charged for the same charge about 21 times. The first respondent was suspended from service for a period of 30 days for the very same offence on 29.02.1996 also. Hence, the order of the Labour Court is modified to one of compulsory retirement with cut of one-third pension for the period upto his normal age of retirement. Beyond the period of his normal age of retirement, the first respondent would be entitled to receive the regular pension due to him. The petitioner is directed to calculate the monetary benefits payable to the first respondent as a result of the modification of the punishment and pay the same to the first respondent within a period of twelve weeks from the date of this order. However, the first respondent



would not be entitled for any interest on the said payment.

19.The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(AE)

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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:

The Labour Court,
Madurai.

+1 CC to M/s.M.PRAKASH, Advocate (SR-1811[F] dated 22/01/2021)

**W.P(MD)No.11515 of 2010
22.01.2021**

ES(CO)

TR(16.02.2021) 7P 3C