



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.04.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.A(MD)No.1098 of 2012

V.Muthupandi

.. Appellant/2nd Respondent
Vs.

1.Tamil Nadu State Transport Corporation,

(Madurai Division-I) Ltd.,

Bye-pass Road,

Madurai - 625 010.

..1st Respondent/Petitioner

2.The Presiding Officer,

Labour Court,

Madurai.

.. 2nd Respondents/1st Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.5163 of 2011 dated 20.09.2012.

Prayer in WP(MD). 5163/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari ,calling for the records on the files of the 1st respondent pertaining to its proceedings in I.D.No.39/2003 dated 08-11-2010 and quash the same.

For Appellant : Mr.T.A.Ebenezer

For Respondents : Mr.J.Senthilkumariah (for R1)

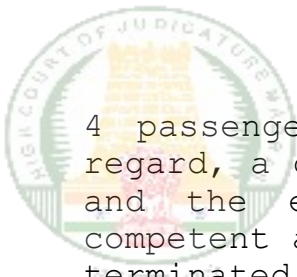
R-2 Labour Court

JUDGMENT

(Judgment of the Court was made by K.KALYANASUNDARAM, J)

This intra-court appeal has been preferred by the workman assailing the order of the Writ Court, dated 20.09.2012, made in W.P.No.5163 of 2011, whereby, the order of the Labour Court passed in I.D.No.39 of 2003 was set aside and the order of the competent authority terminating the appellant was restored.

2.The appellant was appointed as 'Conductor' in the respondent Transport Corporation on 18.08.1991. When he was on duty on 27.04.2003 in the bus bearing registration No.TN-58-N-0008, which was plying between Madapuram and Periyar Bus Stand, a surprise check was conducted by the Checking Inspector at 04.40 p.m. On verification, it was found that the appellant had issued old tickets of Rs.8.50 denomination to 14 passengers and 4 tickets of Rs.7.50 to



4 passengers and thereby, he misappropriated Rs.149/-. In this regard, a charge memo was issued and a departmental enquiry was held and the enquiry officer found the charges were proved. The competent authority agreeing with the finding of the enquiry officer terminated the appellant from service vide order dated 30.06.2003.

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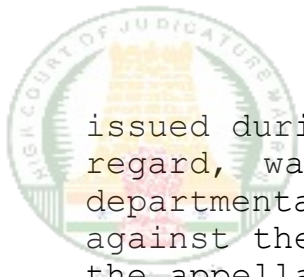
3. Aggrieved over the order of termination, the appellant raised an industrial dispute seeking the relief of reinstatement with continuity of service and full back-wages. The Labour Court vide order, dated 08.11.2010, set aside the order of termination of the respondent, dated 30.06.2003, and ordered reinstatement of the workman into service with continuity of service, however, without back-wages and other benefits. The first respondent Transport Corporation questioned the order of the Labour Court in W.P.No.5163 of 2011. The learned Single Judge having found that the finding of the Labour Court was perverse and against law, quashed the award of the Labour Court. Challenging the same, the present appeal has been filed.

4. The learned counsel for the appellant Mr.T.A.Ebenezer would argue that the appellant herein has rendered unblemished service for 13 years as Conductor in the respondent Corporation, while so, had wrongly punched the tickets as "down" instead of "up". So, the charge of misappropriation of the fund of the Corporation is unsustainable and it has not been proved. It is also contended that for the acceptable negligence, the punishment of dismissal would be disproportionate. It is the submission of the learned counsel for the appellant that the Labour Court has rightly ordered reinstatement of the appellant into service and no ground was made out before the Writ Court to interfere with the order of the Labour Court.

5. Per contra, the learned counsel appearing for the respondents Mr.J.Senthil Kumariah made submissions in support of the order of the learned Single Judge. According to the learned Advocate, the Labour Court went into the enquiry proceedings when it was not required and set aside the order of termination on flimsy grounds that the Management failed to produce the original documents; and fair enquiry was not conducted and the same was rightly set aside by the Single Judge.

6. Heard the submission of the learned counsel appearing for the parties and perused the materials available on record.

7. In the instant case, it is not in dispute that the appellant herein was appointed as "Conductor" in the respondent Transport Corporation in the year 1991 and when he was on duty on 27.04.2003 at about 04.40 p.m, Checking Inspector had conducted surprise check and found that the appellant had issued old tickets, which were

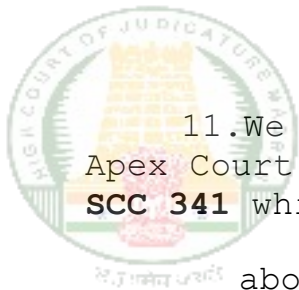


issued during the earlier trip at 02.25 p.m. A charge memo, in this regard, was issued as per the Standing Order No.16(5). In the departmental enquiry, it was held that the charges were proved against the appellant. Based on the finding of the enquiry officer, the appellant was terminated from service on 30.06.2003 and the same was challenged before the Labour Court.

8.The stand of the appellant before the Labour Court was that the Standing Order No.16(5) deals with the theft, dishonesty relating to corporation business and it does not cover the offence of misappropriation. It is his further case that he has wrongly punched the tickets as "down" instead of "up"; he had no intention to misappropriate the funds and the act of the appellant was not wilful and it was out of mistake, which occurred due to over work. The Labour Court held that the charge of misappropriation covers the Standing Order No.16(5) and hence, the charge was maintainable. The said finding of the Labour Court remains unchallenged by the appellant.

9.It is required to be pointed out that the only issue arose for consideration before the Labour Court was whether the punishment awarded to the workman was disproportionate to the proved charges. In the present case, it was the case of the workman that in the enquiry proceeding, fair opportunity was not provided to him. In other words, the enquiry proceeding was not questioned by the workman before the Labour Court and hence, no need arose for the Management to again prove the charges in the I.D proceedings. However, the Labour Court set aside the order of termination mainly on the ground that the original documents have not been filed and only Xerox copies were placed on record. On perusal of the order of the Labour Court, it is also seen that no finding has been recorded as to whether the punishment of termination was disproportionate.

10.The learned single Judge taking note of the above mentioned facts held that there was no necessity for the Management to prove the charges once again since the appellant/workman did not challenge either the enquiry or the finding of guilt. So, the very approach of the Labour Court was found fault with by the learned Single Judge eventually arrived at a conclusion that the entire finding is totally perverse and not sustainable in law. The Judgment of the Hon'ble Apex Court in **T.N.C.S Corporation Limited and others vs. K.Meera Bai (2006(2)SCC 225)** was followed by the Writ Court to confirm the order of termination, wherein, the Hon'ble Supreme Court held that when the employee was found guilty of misappropriating the employer Corporation's fund, the primary factor to be taken into consideration was the loss of confidence, and not the amount of money misappropriated and thereby, the order of dismissal from service was held not to be disproportionate.



11. We may also refer to the following observation made by the Apex Court in **Diwan Singh vs. L.I.C and others** reported in **(2015)2 SCC 341** while considering a similar question:-

"7. We have given thoughtful consideration to the above argument advanced on behalf of the appellant. The explanation put forth does not appear to be convincing, as the cashier would not have issued a receipt without counting the cash at the counter. Secondly, had the act on the part of the appellant been bonafide, he would not have made forged entry of Rs.533/- in the carbon copy of ledger sheet on 13.8.1990 between entry Nos. 12 and 13. As such, the finding of the enquiry officer holding the appellant guilty, in our opinion, cannot be said to be against the evidence on record.

8. As far as argument relating to quantum of punishment, as modified by the High Court, which results in consequential forfeiture of pensionary benefits in view of Rule 23, quoted above, is concerned, we do not find the punishment to be harsh or disproportionate to the guilt, in view of the nature of the charge of which the appellant is found guilty in the present case. Time and again, this Court has consistently held that in such matters no sympathy should be shown by the Courts.

9. In **N.E.K.R.T.C v. M. Amaresh** [(2006)6 SCC 187], this Court, in para 18 of the judgment has expressed the views on this point as under:

"18. In the instant case, the misappropriation of the funds by the delinquent employee was only Rs 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who misappropriated the funds of the Corporation and the factors to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment."

10. In **Karnataka SRTC v. A.T. Mane** [(2005)3 SCC



254] in which unaccounted amount was only Rs.93/- this Court expressed its opinion in para 12 as under:

"12.Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal".

11.In *Niranjan Hemchandra Sashittal and another v. State of Maharashtra* [(2013)4 SCC 642], this Court has made following observations in paragraph 25 of the judgment: -

"25..... In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small, and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenets of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law."

12.In *Rajasthan SRTC v. Bajrang Lal* [(2014)4 SCC 693], this Court, following the case of *Municipal Committee, Bahadurgarh v. Krishnan Behari and others* [(1996)2 SCC 714], has opined that in cases involving corruption there cannot be any other punishment than dismissal. It has been further held that any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. In said case (*Rajasthan SRTC*), the respondent/employee was awarded punishment of removal from service. In the present case it is compulsory retirement. Learned counsel for respondents submitted that on earlier occasion, appellant was awarded minor punishment, for his misconduct, regarding defalcation of stamps. And now he is found guilty for the second time.



13. Therefore, in the above circumstances in view of the law laid down by this Court, as above, we are not inclined to interfere with the impugned order passed by the High Court. Accordingly, the appeal is dismissed with no order as to costs."

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12. In the latest decision, the Division Bench of Karnataka High Court in the case of **D. Gandhi vs. Central Bank of India** (W.A.No.3129 of 2018 dated 12.11.2020) (S.RES) following the dictum of the Hon'ble Supreme Court in the case of **Diwan Singh** (supra) has held as follows:-

"7. After evaluating entire evidence relied upon by the management, disciplinary authority has arrived at a conclusion that these charges namely, charges 1 to 3 had been proved. On account of charges 1 to 3 having been proved the punishment of removal/dismissal from services under Regulation 4(i) and (j) of Central Bank of India Officer Employees' (Conduct) Regulations, 1976, came to be passed. Hon'ble Apex Court in **DIWAN SINGH v. L.I.C. AND OTHERS** reported in (2015) 2 SCC 341 referred to herein supra after referring to catena of judgments has held that any sympathy in such cases is totally uncalled for. It has also been held that if an employee is found guilty of misappropriation of funds of the bank, it would not be inappropriate for the disciplinary authority to remove such employee from service, inasmuch as, employee would have lost the confidence of the employer or faith, which had been reposed in him as he would be discharging the duties as custodian of the bank or custodian of the public money and if generosity or sympathy were to creep in, it would definitely be a misplaced sympathy and if the punishment is sought to be reduced by this court it would amount to granting a premium to a person who has been held guilty of misappropriation and thereby it would erode the confidence reposed by the public in employer like the bank in question.

8. A contention with regard to punishment being disproportionate to gravity of offence having been raised in this appeal, we called upon Sri. Pradeep S. Sawkar, learned counsel appearing for respondent-bank to respond as to whether on account of punishment of removal/dismissal from service having been passed against the petitioner as to whether other punishments also imposed would affect the retrial or terminal benefits of the delinquent employee. He has made a categorical statement before this court that on account of substantial punishment of removal having been passed, petitioner would be entitled to all retirement



benefits to which he is entitled under law without reference to other punishments imposed like, reduction of pay by 2 stages and the like. His statement and submission is placed on record. In the light of aforesaid discussion, we do not find any good ground to entertain this appeal and subject to observations made hereinabove, appeal stands dismissed by affirming the order dated 17.07.2018 passed in W.P.No.27944/2019.

13.In the light of the aforementioned settled legal proposition and the facts of this case, we find no merit in the appeal warranting interference of this Court. In such view of the matter, this writ appeal fails and the same stands dismissed. However, there is no order as to cost.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skn

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.Tamil Nadu State Transport Corporation,
(Madurai Division-I) Ltd.,
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2.The Presiding Officer,
Labour Court,
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