



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

WEB COPY

Writ Petition (MD)No.5035 of 2011

L.Gopalakrishnan

... Writ Petitioner

Vs.

1.The Management,
Tamil Nadu State Transport Corporation,
Kumbakonam Division,
Kumbakonam.

2.The Presiding Officer,
Labour Court,
Cuddalore.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records from the second respondent and to quash the order passed in I.D.No.16 of 2003, dated 07.06.2007 by the Labour Court and consequently, direct the first respondent to reinstate the petitioner in service with all benefits.

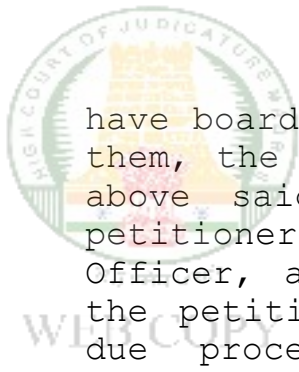
For Petitioner : Mr.V.Chandrasekar

For R1 : Mr.S.Baskaran
Standing counsel

O R D E R

This writ petition has been filed challenging the order passed by the Labour Court in I.D.No.16 of 2003, dated 07.06.2007 and consequently, direct the first respondent to reinstate the petitioner in service with all benefits.

2. The case of the petitioner is that the petitioner was working as a Conductor in the first respondent Transport Corporation. On 27.01.1999, while he was in duty in a bus bearing No.TN 49/741, two Checking Inspectors boarded the bus at Devaryanery near Thuvakudi, for conducting a surprise check. Thereafter, they have conducted checking and found that three passengers boarded the bus at Thuvakudi without tickets. Thereafter, the Checking Inspectors attempted to levy a fine to the passengers as if they have travelled from Trichy without tickets. At that time, the passengers given a statement that they



have boarded the bus at Trichy and even after receiving money from them, the petitioner has not issued tickets to them. Based on the above said allegation, a charge memo was issued against the petitioner and an Enquiry Officer was appointed. The Enquiry Officer, after conducting enquiry, drawn a proven minute against the petitioner. Based on the proven minute, after following the due procedure, the petitioner was dismissed from service. Challenging the said order of dismissal, the petitioner has raised a conciliation proceedings before the Labour Officer. However, the Labour Officer has filed a failure report. Thereafter, the petitioner has raised an industrial dispute in I.D.No.16 of 2003 before the Labour Court and the Labour Court has dismissed the I.D.No.16 of 2003, on 07.06.2007. Challenging the same, the present writ petition has been filed.

3. Before the Labour Court, on behalf of the petitioner/workman, Ex.W.W.1 was marked and no witness was examined and on behalf of the first respondent/Management, Exs.M.Ws.1 to 12 were marked and no witness was examined.

4. The learned counsel appearing for the petitioner would submit that the order of Labour Court is *per se* illegal and though the petitioner/workman did not examine any witness on his behalf, he marked the failure report of the Labour Officer. Though the Management marked the passengers statement as Ex.M.W.5, they were not examined as witnesses before the Labour Court and without examining the crucial witnesses, proving the case against the petitioner is *non est* in the eye of law and without considering the said aspect, the Labour Court has dismissed the I.D.No.16 of 2003 filed by the petitioner. Hence, he prayed for allowing this writ petition.

5. Per contra, the learned counsel appearing for the Management would submit that the Enquiry Officer has conducted a fullfledged enquiry, in which the statement of the passengers was marked and the Enquiry Officer has drawn a proven minute against the petitioner. After analysing the entire factual scenario, the Labour Court has dismissed the petition, which is legally valid. He would further submit that the order of the Labour Court cannot be interfered with by this Court under Article 226 of the Constitution of India and the evidence recorded by the Enquiry Officer, which is confirmed by the Labour Court, cannot be re-appreciated by this Court under Article 226 of the Constitution of India.

6. Heard the learned counsel for the petitioner/workman, learned counsel for the first respondent/Management and perused the materials available on record.



7. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence.

8. Before the Labour Court, no document was marked on behalf of the petitioner/workman to disprove the case of the Management. However, the first respondent Management marked Exs.M.W.1 to 12. The statements of the passengers was marked as Ex.M.W.5, the passengers' tickets was marked as Ex.M.W.8 and the deficiency report also marked as Ex.M.W.9. Further, the Checking Inspectors' report was marked as Ex.M.W.10. Apart from that, the cash receipt and invoice of the petitioner were marked as Ex.M.Ws.11 and 12.

9. In view of the above said evidences, this Court finds no reason to disbelieve the statements of the passengers and the Checking Inspectors and the above said facts leading to next question whether the Labour Court has exercised the power under Section 11-A of the Industrial Disputes Act, 1947. A similar issue was dealt with by this Court in W.P.(MD)No.2189 of 2005, dated 10.11.2009. Paragraph Nos.14 to 20 of the order passed thereon is extracted hereunder:

14. 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 11-A. 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.

15. 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.

16. A careful reading of the above judgments of the Supreme Court would go to show that in exercise of the power under Section 11-A, 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.

17. 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 11-A the Labour Court has jurisdiction and powers to interfere with the quantum of punishment, however, the discretion has to be used judiciously.



18. 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 11-A 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.

19. 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."

20. Another Division Bench of this Court, in which I was a party, 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 which also I was a party, 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.

10. Keeping the above catena of judgments in mind, the facts of the present case should be looked into. The proved misconduct is that the conductor, having collected the fare of Rs.29.25, did not issue ticket to the passengers and thereby misappropriated the sum of Rs.29.25 and the same was well established before the Labour Court. Hence, the order impugned in the writ petition cannot be interfered with. Accordingly, this Writ Petition is dismissed and the order passed by the Labour Court in I.D.No.16 of 2003, dated 07.06.2007 is confirmed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

akv

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 Management,
Tamil Nadu State Transport Corporation,
Kumbakonam Division,
Kumbakonam.

2.The Presiding Officer,
Labour Court,
Cuddalore.

+1 CC to Mr.S.BASKARAN, Advocate (SR-3711[F] dated 08/02/2021)

Writ Petition (MD)No.5035 of 2011

08.02.2021