



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2021

CORAM:

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.8773 of 2012

and

M.P(MD)No.1 of 2012

The Managing Director,
Tamil Nadu State Transport Corporation
Madurai Division - 1 Limited,
Tirunelveli/Madurai.
Now known as TNSTC, Tirunelveli Limited,
19, Trivandram Road,
Vannarapettai, Tirunelveli. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.S.Ashokan ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records on the file of the first respondent pertaining to its proceedings order passed in I.D.No.02 of 2004 dated 11.12.2009 and quash the same.

For Petitioner : Mr.S.C.Herold Singh, Advocate

For Respondents : Mr.J.Ashok
for M/s.Jeyapal Associates
for R - 2

* * * * *

ORDER

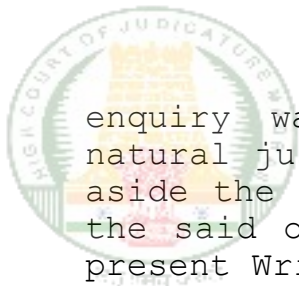
This Writ Petition is filed seeking for issuance of a writ of Certiorari, to call for the records on the file of the first respondent pertaining to its proceedings order passed in I.D.No.02 of 2004 dated 11.12.2009 and quash the same.



2. The case of the petitioner Transport Corporation is that the second respondent was appointed as a driver in the year 1982 and on 22.09.1994, while he was in service, the second respondent was allotted the duty in Ramanujamputhur bus bearing Registration No.TCP 7960 and on that day, the second respondent, instead of taking the trip by 02.00p.m., he has taken the bus at 02.30p.m., and reached Ramanujamputhur lately and he purposely came back only by 05.25 p.m. Thereafter, the 04.20 p.m., trip was cancelled. Thereafter, the Checking Inspector, after considering the situation of the passengers, informed the second respondent to take a trip from Tirunelveli Junction to Karunkulam and the same was refused by the second respondent and on his own, he has taken the bus to Arasarkulam and returned by 09.20 p.m.. Thereafter 2 trips to Ramanujamputhur was cancelled, which causes great loss to the corporation.

3. The other imputation against the second respondent is that on 05.10.1994, the second respondent instead of reaching 4.15p.m., taking the bus to Ramanujamputhur by 04.20p.m., he came by 05.10p.m, and had taken the bus by 05.25 p.m. After returning from Ramanujamputhur, the second respondent has to take the bus to Arasakulam, whereas he purposely came late by 08.30p.m. This act of the second respondent caused great loss to the Corporation. For the above said lapses, the second respondent was issued with a charge memo on 19.10.1994. The second respondent failed to furnish a reply to the said charge memo and thereafter the second respondent requested the petitioner Transport Corporation to furnish a copy of the basic complaint and he was permitted to pursue the same. Despite that, he has not chosen to furnish his explanation. Thereafter a domestic enquiry was conducted on 17.10.1995. In the domestic enquiry, full opportunity was given to the second respondent. The enquiry officer, after conducting the enquiry, has filed a report stating that the charges against the second respondent, except with regard to the delinquency on 22.09.1994, were proved. Based on the proven minute, a second show cause notice was issued on 04.01.1996. However, the second respondent has not submitted any explanation to the second show cause notice. Hence, the petitioner Transport Corporation, left with no other option, imposed a punishment of increment cut for six months with cumulative effect.

4. Challenging the said order of punishment, the second respondent raised an industrial dispute under Section 2(k) of the Industrial Disputes Act in I.D.No.2 of 2004. Before the Labour Court, on behalf of the second respondent, he himself was examined as P.W.1 and eight documents viz., Exs.P.1 to P.8 were marked and on the side of the Transport Corporation, one witness was examined as M.W.1 and eleven documents viz., Exs.M.1 to M.11 were marked. After analysing the entire witnesses and documents available before the



enquiry was properly conducted by following the principles of natural justice, however differed the punishment and ordered to set aside the punishment imposed on the second respondent. Challenging the said order, the petitioner Transport Corporation has filed the present Writ Petition.

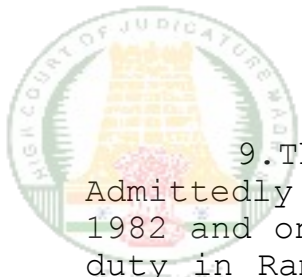
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5. Learned Counsel appearing for the petitioner would submit that though the first charge was not proved as against the second respondent, other charges were clearly proved before the Enquiry Officer as well as before the Labour Court. However, without considering the said aspect, the Labour Court set aside the punishment imposed by the disciplinary authority which is *non-est* in law. Accordingly, he would pray for appropriate orders.

6. Per contra, learned Counsel appearing for the second respondent would submit that the second and third charges are merged with the first charge and once, the first charge was not proved, then there is no question of other charges. However, the Enquiry Officer, without considering the same, filed a report by stating that the second and third charges were proved and to substantiate the same, no material was placed before the Labour Court. The Labour Court, after considering all the materials and evidences adduced, has correctly arrived at a conclusion by setting aside the punishment imposed by the Disciplinary Authority and hence, he would pray for dismissal of the writ petition.

7. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the second respondent and perused the materials placed on record.

8. 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. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award. First, it has to be seen, whether the Employer Management was able to exactly establish as to guilt committed by Employee and whether there was evidence to show that the Employee concerned is solely responsible for the guilt and the same is affected the reputation of the Employer Management.



9. The facts in the present case are not in dispute. Admittedly second respondent was appointed as a driver in the year 1982 and on 22.09.1994, while he was in service, he was allotted the duty in Ramanujamputhur bus bearing Registration No. TCP 7960 and on that day, the second respondent, instead of taking the trip by 02.00p.m., he has taken the bus at 02.30p.m., and reached Ramanujamputhur lately and he purposely came back only by 05.25 p.m. Thereafter, the 04.20 p.m., trip was cancelled. Thereafter, the Checking Inspector, after considering the situation of the passengers, informed the second respondent to take a trip from Tirunelveli Junction to Karunkulam and the same was refused by the second respondent and on his own, he has taken the bus to Arasarkulam and returned by 09.20 p.m.. Thereafter 2 trips to Ramanujamputhur was cancelled, which causes great loss to the corporation.

10. The other imputation against the second respondent is that on 05.10.1994, the second respondent instead of reaching 4.15p.m., taking the bus to Ramanujamputhur by 04.20p.m., he came by 05.10p.m, and had taken the bus by 05.25 p.m. After returning from Ramanujamputhur, the second respondent has to take the bus to Arasakulam, whereas he purposely came late by 08.30p.m. This act of the second respondent caused great loss to the Corporation. For the above said lapses, the second respondent was issued a charge memo on 19.10.1994. For the above said charge, the second respondent filed a written explanation which was marked as Ex.P.2. On a perusal of Ex.P.2, it would reveal that while the second respondent returned from Ramanujamputhur, there was a railway cross on the way nearby Karaseri and there was a bullock cart stationed on the middle of the road and thereby there was a heavy traffic jam and hence, he was not able to ply the vehicle, for which there was a delay in completing the trip. The said explanation was submitted before the Enquiry Officer and the Enquiry Officer accepting the said explanation, held that the first charge was not proved.

11. In respect of disobedience of superior officer's direction, that charge was not established before the Labour Court and in order to substantiate the said charge also, no document was produced on the side of petitioner Transport Corporation before the Labour Court. The petitioner Transport Corporation has to establish, for which direction, the second respondent was disobeyed and to that effect, no document was filed. In the absence of any document to prove the charge against the second respondent, the said charge cannot be sustained. The Labour Court, after careful consideration of all relevant evidences and materials, has arrived at a conclusion by setting the punishment imposed against the second respondent, which does not warrant any interference.

12. For the reasons aforesaid, this writ petition is devoid of merits and accordingly, the same is dismissed. Consequently,



connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)

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 Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-8578[F] dated 04/03/2021

W.P (MD)No.8773 of 2012

03.03.2021

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TK/16.03.2021/5P/3C