



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.8825 of 2012

and

M.P.(MD).No.1 of 2012

WEB COPY

The Management,
Tamilnadu State Transport Corporation
(Madurai Division-II) Limited,
19, Trivandram Road,
Vannarpet,
Tirunelveli-627 003.

.. Petitioner

Vs.

1.The Joint Commissioner of Labour (Conciliation),
Chennai-6.

2.A.Mariappan

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the first respondent pertaining to its proceedings order passed in Approval Petition No.69 of 2005, dated 23.12.2010 and quash the same.

For Petitioner : Mr.S.C.Herold Singh

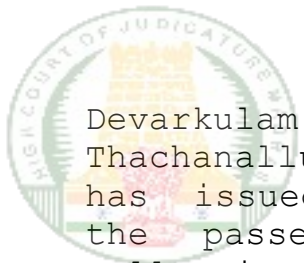
For Respondent No.1 : Mr.A.Karthick
Government Advocate

For Respondent No.2 : Mr.R.Manimaran

O R D E R

This writ petition has been filed against the order passed in Approval Petition No.69 of 2005, dated 23.12.2010 by the first respondent.

2. The case of the petitioner is that while the second respondent was discharging his duty as conductor in the petitioner's Corporation bus bearing Registration No.TN-33-N-1063, on 20.01.2005, the second respondent was received bus fare of Rs.10.00/- from a passenger, who boarded the bus to go to



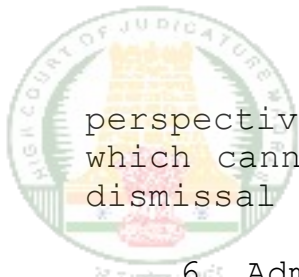
Devarkulam from Thachanallur. Though the fare for a person from Thachanallur to Devarkulam was Rs.8.50/-, the second respondent has issued ticket of Rs.3.50/- alone and paid back Rs.1.50/- to the passenger. Thus, he has misappropriated Rs.5.00/- by collecting correct fare and issued less fare ticket and accordingly he has committed offence under 16(4) and 16(14) of the Standing Orders.

2.1. For the above said lapses, a charge memo along with temporary suspension order was issued to the second respondent. Pursuant to the charge memo, show cause notice was issued. Thereafter, enquiry officer was appointed and domestic enquiry was conducted, where the petitioner has also participated in the enquiry. Ultimately, enquiry officer filed proven minutes and the charges framed against the second respondent were proved. Thereafter, second show cause notice was given to the second respondent on 15.04.2005, which was replied by giving explanation by the second respondent. Considering the enquiry officer's proven minutes and explanation given by the second respondent to the second show cause notice and taking into account all other aspects, the petitioner Corporation dismissed the second respondent from service by an order dated 11.05.2005 by complying the requirements stated under Section 33(2)(b) of the Industrial Disputes Act. Thereafter, the petitioner Corporation filed an approval petition in Approval Petition No.69/2005 before the Joint Commissioner of Labour (Conciliation), Chennai, seeking the approval of this authority for the dismissal of the second respondent herein. The said approval petition was rejected by the first respondent herein on 23.12.2010. Aggrieved against the same, the present writ petition has been filed by the petitioner Corporation.

3. Heard the submissions made on either side and perused the materials available on record.

4. The learned counsel for the petitioner would submit that the Labour Court need not go into the merits of the issue, however, the Labour Court decided the approval petition after waiving the evidence adduced before the Enquiry Officer and mechanically set aside the findings of the domestic enquiry and rejected the approval petition, which is not sustainable in law. Hence, he prays for allowing this writ petition.

5. Per contra, the learned counsel appearing for the second respondent would submit that the approval petition was rejected on the simple ground that the concerned passenger was not examined before the Enquiry Officer and the statement of the passenger was not recorded. Without examining the necessary evidence, imposing maximum punishment of dismissal from service is not proportionate and hence, after ascertaining the entire issue in proper



perspective, the Labour Court rejected the approval petition, which cannot be interfered by this Court. Therefore, he prays for dismissal of this writ petition.

6. Admittedly, the facts in the present case are not disputed and the core issue involved in the present case is whether there is any justification for imposing maximum punishment of dismissal from service or not. Considering the facts and circumstances of the present case, the crucial witness required to be considered by the Enquiry Officer is the passenger, who lost money to the second respondent and the allegation against the second respondent is misappropriation of Rs.5.00/- from the passenger by way of issuing ticket only for Rs.3.50/- instead of issuing ticket for Rs.8.50/-. Further, the second respondent paid the balance amount of Rs.1.50/- to the passenger, out of the amount of Rs.10.00/- which was paid by the passenger. Further, in order to prove the above said allegation, the Transport Corporation ought to have examined the passenger. However, the passenger was not examined and his statement was not recorded by the checking inspector. In the above said lapses, findings of the Labour Court, in the considered opinion of this Court, does not warrant any interference, as the said findings is the natural corollary, after having considered the factual matrix of this case.

7. In the light of the above observation, the proceedings of the Joint Commissioner of Labour (Conciliation), Chennai, in Approval Petition No.69 of 2005, dated 23.12.2010 is confirmed and this writ petition stands dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

PJL

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 Joint Commissioner of Labour (Conciliation),
Chennai-6.

+1 CC to MR.S.C.HEROLD SINGH, Advocate (SR-6580[F] dated
23/02/2021)

+1 CC to SPL GP (SR-6701[F] dated 23/02/2021)

+1 CC to MR.R.MANIMARAN, Advocate (SR-6735[F] dated 23/02/2021)

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