



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:24.02.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P. (MD)No.9887 of 2012

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The General Manager,
Tamil Nadu State Transport Corporation
(Madurai Division) Ltd.,
Vannarpettai,
Tirunelveli.

... Petitioner

Vs.

1.S.Asokan

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... 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 files of the 1st respondent pertaining to its proceedings order passed in I.D.NO.113 of 2004 dated 11.12.2009 and quash the same.

For Petitioner : Mr.S.C.Herold Singh
For Respondents : No appearance for R-1

ORDER

This Writ Petition is filed challenging the order, dated 11.12.2009 passed by the first respondent in I.D.No.113 of 2004.

2.The case of the petitioner is that the first respondent is a Driver in the Tamil Nadu State Transport Corporation (Madurai Division) Ltd., Tirunelveli, from the year 1982. Already 47 punishments have been imposed against the first respondent for various misconducts on different occasions and hence, his past service records are not clean. Therefore, the first respondent was placed under suspension on 13.05.1995 and a charge sheet was also issued on 17.05.1995 levelling the following charges:

"(i)That he had abused the Branch Manager when the controller in charge had asked him to serve in Route No.33-A on 11.05.1995.

(ii)In the midst of the co-employee, he had spoiled the name of the Corporation.

(iii)That he had disturbed the work of others."



Thereafter, the first respondent has submitted his explanation and a detailed enquiry was conducted and two witnesses were examined in support of the charges. During enquiry, the charges against the first respondent were established. On the basis of the proven minutes submitted by the Enquiry Officer that the charges against the first respondent were proved, the first respondent asked to submit his explanation to the findings of the Enquiry Officer as well as the proposed punishment of dismissal from service. Accordingly, the first respondent has submitted his explanation on 14.11.1995 disputing the findings of the Enquiry Officer. Since the explanation submitted by the first respondent was not satisfied, the petitioner Management has passed an order, imposing a major punishment of dismissal from service in conformity with the proposed punishment by his order dated 16.01.1996.

3. Aggrieved by the said punishment, the first respondent raised an industrial dispute in I.D.No.113 of 2004 before the second respondent. After hearing both sides, the second respondent has interfered with the order passed by the petitioner Management and modified the punishment into one of stoppage of increment for a period of two years with cumulative effect. Against which, the petitioner is before this Court with the aforesaid prayer.

4. On the side of the first respondent/employee, he examined himself as witness and documents Exs.P.1 to P.10 were marked and on behalf of the petitioner Management, one witness was examined and documents Ex.R.1 and Ex.R.15 were marked.

5. After analyzing the oral and documentary evidence, the Labour Court has arrived at a conclusion that the reliance placed on the deposition of the witnesses could not be accepted and after holding so, it has chosen to interfere with the order of punishment and modified the punishment into one of stoppage of increment for a period of two years with cumulative effect. As against the award of the Labour Court, the present writ petition is filed.

6. The learned counsel appearing for the petitioner Management submitted that the complainant viz., Thadiveeran and one Conductor viz., Mangaleswaran were examined as witnesses on the side of the Management before the Enquiry Officer and they categorically deposed that the first respondent abused the Branch Manager by using filthy language, which was proved during the cross-examination. Further, the learned counsel submitted that the second respondent has imposed the minor punishment, which would encourage the other employees to follow the footsteps of the first respondent. In order to maintain the discipline, the major punishment of dismissal was imposed against the 1st respondent, which cannot be interfered with by the Labour Court. Hence, he prays for allowing the present writ petition.



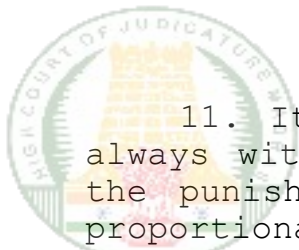
7.Despite service of notice, the first represent has not chosen to appear before this Court either through his counsel or in person to contest the Writ Petition. Therefore, this Court, after hearing the counsel for the petitioner Management, dispose the writ petition with available records.

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8.Before this Court ventures into the merits of the contention, 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.

9.The facts in the present case are not in dispute. Admittedly, the first respondent has entered into service in the year 1982 in the petitioner Management and he has received the charge memo, as if he abused the Branch Manager, when the controller in-charge had asked him to serve in Route No.33-A on 11.05.1995. The said complaint was marked before the Labour Court, as Ex.R.1. A perusal of Ex.R.1 reveals that the complainant viz., Thadiveeran requested the first respondent to serve Route No.33-A, for which, the first respondent used filthy language against the Branch Manager and the said Thadiveeran. In order to prove the same, the complainant and one Mangaleswaran were examined as witnesses on the side of the Management and their statements and cross-examination were marked as Ex.M.8 and Ex.M.9.

10. A perusal of Ex.M.8 and Ex.M.9 reveals that the first respondent, though cross-examined the said Thadiveeran and Mangaleswaran, however, curiously, there is not even an iota of suggestion made by the first respondent with regard to his not abusing the Branch Manager and that the questions put forth on behalf of the 1st respondent are only to the extent of fishing in troubled waters. The questions put forth on behalf of the 1st respondent are irrelevant to the charges levelled against the 1st respondent. An overall consideration of the entire materials available on record reveal that the misconduct committed by the petitioner is serious in nature, which has necessitated the petitioner Management to impose the major punishment of dismissal from service. However, the said punishment was interfered with by the Labour Court, without adducing any proper reasoning.



11. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In **Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

12. On an overall appreciation of the materials available on record, this Court is of the considered view that the modification of punishment into one of stoppage of increment for a period of two years, as ordered by the court below, is bereft of any materials and proper reasoning. No reasoning has been adduced by the court below to the effect that the punishment imposed on the 1st respondent is disproportionate to the charges levelled against him. In the absence of the same, the order passed by the Labour Court deserves to be interfered with.



13. Accordingly, this Writ Petition is allowed and the order dated 11.12.2009 passed in I.D.No.113 of 2004 by the second respondent/Labour Court, is set aside and the punishment awarded by the petitioner on the 1st respondent is restored. No costs.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-7081[F] dated 25/02/2021)

W.P. (MD)No.9887 of 2012

24.02.2021

CN(22.06.2021) 5P 3C