



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2021

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD).No.4472 of 2013

S.Sampath

.. Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Management,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye-Pass Road,
Madurai - 16.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the Award passed by the first respondent in I.D.No.29 of 2009 dated 21.06.2012 confirming the dismissal order passed by the second respondent in his order dated 08.01.2008 and quash the same and consequently, direct the second respondent to reinstate the petitioner into service with continuity of service and back-wages and all other monetary benefits.

For Petitioner	: Mr.V.S.Balarengasamy
For 1st Respondent	: Court
For 2nd Respondent	: Mr.J.Senthilkumaraiah

O R D E R

This writ petition is filed for issuance of a Certiorarified Mandamus to quash the award passed by the first respondent, Presiding Officer, Labour Court, Madurai in I.D.No.29 of 2009 dated 21.06.2012 confirming the order of dismissal passed by the second respondent, dated 08.01.2008 and consequently, direct the second respondent to reinstate the petitioner into service with continuity of service and back-wages and all other attendant and monetary benefits.

2.The petitioner was dismissed from service by the second respondent for misappropriation of a sum of Rs.7,216/-. The petitioner was working as a Conductor in the second respondent Corporation and he was posted as Conductor in the route Tenkasi to Kumuli. On 22.08.2004, there was a spot inspection, while the petitioner was on duty, it was found that the petitioner by reissuing sold tickets has misappropriated a sum of Rs.153/- on that particular date. Based on the enquiry report the charges were held proved earlier for similar charges and the petitioner for the period



from June 2004 to August 2004 was found to have misappropriated a sum of Rs.6,961/- on 29 occasions. Thereafter, the petitioner was placed under suspension and disciplinary proceedings were initiated.

3. It is admitted that an enquiry was conducted and that the charges against the petitioner was proved. Ultimately, the second respondent after finding the petitioner for guilty of charges, implemented the punishment of dismissal by order, dated 08.01.2008. Challenging the order of dismissal, the petitioner raised an Industrial Dispute in I.D.No.29 of 2009 before the Labour Court, Madurai. The Labour Court, Madurai dismissed the said petition and categorically found that the charges were proved. Stating that the petitioner has misappropriated the public amount, the Labour Court found the punishment, as appropriate.

4.It is seen that the petitioner was awarded only a lesser punishment for all the instances of misappropriation of funds on several occasions. The misappropriation proved against the petitioner was not a instance. Taking into account the past performance and several instance of misappropriation proved against the petitioner the punishment of dismissal was awarded. The petitioner did not deny the previous punishments awarded to him. The post of Conductor in a State owned Corporation is a responsible post and it is possible for every Conductor to indulge in such misappropriation taking advantage of given circumstances. Every Conductor in the second respondent Corporation is expected to issue proper ticket and submit proper account and unless there is some mistake or defect by inadvertence the Management should curtail all possible mischief by strictly giving guidelines and impose appropriate punishment whenever there is wilful negligence or misappropriation of funds even if it is meagre, the punishment should be to set an example for others. If any sympathy is shown to the Conductor, by the quantum of amount it will lead to a dangerous situation, threatening the very existence of Public Transport Corporation.

5.The learned counsel appearing for the second respondent Corporation relied upon the judgment of the Hon'ble Supreme Court in the case of **Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane** reported in **(2005) 3 SCC 254**. The Hon'ble Supreme Court in a similar case has held as follows :

"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 corporation's fund, there is nothing wrong in the corporation losing confidence or faith in



such a person and awarding a punishment of dismissal.

13.This Court in the case of B.S. Hullikatti (supra) held in a similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment."

6.In the present case, the second respondent considered the case of the petitioner on merits in the light of the materials and statement of witnesses. After holding that the petitioner is unfit to be in service, the Labour Court has also dismissed the petition filed by the petitioner. This Court finds no reason to interfere with the award of Labour Court and hence, this petition is devoid of merits.

7.The learned counsel for the petitioner states that a direction may be given to the second respondent to give the amount towards gratuity and provident fund payable to the petitioner.

8.The learned counsel for the second respondent states that the petitioner may get his provident fund dues but not gratuity, as gratuity is not payable for the dismissed employee.

9.Accordingly, the writ petition is dismissed. It is open to the petitioner to make appropriate representation for disbursement of provident fund and on such representation being made, the second respondent shall consider and pass appropriate orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of such representation. No costs.

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RM

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

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2.The Management,
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+1 CC to M/s.V.S.BALARENGASAMY, Advocate (SR-25730[F] dated
10/08/2021)

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LS (CO)
KB(16.08.2021) 4P 4C