



WEB COPY

W.A.[MD]No.1174 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.[MD]No.1174 of 2021

and

C.M.P.[MD]No.5011 of 2021

1.The Management Tamil Nadu State Transport Corporation
(Madurai Division - II) Limited,
Now bifurcated as Tamil Nadu State Transport Corporation,
Tirunelveli Limited,
Rep by its Managing Director,
23/2, Thoothukudi Road,
Kattabomman Nagar,
Tirunelveli - 627 011.

2.The General Manager (Disciplinary Action),
Tamil Nadu State Transport Corporation Ltd.,
19, Trivandram Road,
Vannarpet Post,
Tirunelveli - 627 003.

: Appellants/1st & 2nd Respondent

Vs.

1.V.Manickam

: 1st Respondent/Petitioner

2.The Presiding Officer,
Labour Court, Tirunelveli.

: 2nd Respondent/3rd Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent,
praying to set aside the common order dated 05.12.2019, in W.P.
[MD]No.23931 of 2016 and allow this Writ Appeal.

Prayer in WP(MD). 23931/ 2016 :

Writ Petition is filed under Article 226 of the
Constitution of India, for issuance of Writ of Certiorarified
Mandamus, to call for the records pertaining to the Impugned Order
of dismissal in ID No.69/2013 dated 13.11.2014 on the file of
Respondent No.3 and quash the same as illegal, and consequently to
direct Respondents 1 and 2 to reinstate the petitioner in the post
of Technical Assistant with all consequential benefits, within the
time stipulated by this Hon'ble Court

For Appellants : Mr.R.Rajamohan

For Respondent No.1 : Mr.T.Aswin Rajasimhan

for Mr.T.Lajapathi Roy



JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

This Writ Appeal by the Management of the Tamil Nadu State Transport Corporation, Tirunelveli [formerly Madurai Division - II] is directed against the order dated 05.12.2019 in W.P.[MD] No.23931 of 2016, filed by the first respondent herein.

2.By the impugned order, the punishment of dismissal from service imposed on the first respondent workmen was modified into one of compulsory retirement. The management being aggrieved by such order is on appeal before us.

3.We have elaborately heard Mr.R.Rajamohan, learned Counsel appearing for the appellant Transport Corporation and Mr.T.Aswin Rajasimhan, for Mr.T.Lajapathi Roy, learned Counsel appearing for the first respondent workman.

4.The respondent workman was working as a Technical Assistant in the appellant Corporation and was issued with a charge memo dated 11.02.2004 for unauthorised absence for a period from 02.02.2004 to 09.02.2004, for about eight [8] days. The charge memo culminated in an order of dismissal dated 27.04.2005. Since there were disputes pending between the Management and the employers union, the Management was required to obtain approval from the competent authority in terms of Section 33 (2)(b) of the Industrial Disputes Act, 1947 ['the Act', for brevity]. Accordingly, Approval Petition was filed by the Management, which was numbered as Approval Petition No.64 of 2005, in which, it was held that the findings of the enquiry officer who conducted domestic enquiry was perverse. However, the competent authority remanded the matter for leading fresh evidence and ultimately, the approval was granted. Consequently, the order of dismissal took effect.

5.The first respondent raised a dispute in I.D.No.69 of 2013 on the file of the Labour Court, Tirunelveli, questioning the order of dismissal from service. The Labour Court by an order dated 13.11.2014, dismissed the Industrial Dispute. Challenging the same, the writ petition was filed. The learned Single Judge found that the order rejecting the dispute by the Labour Court and confirming the order of dismissal from service to be incorrect. But, taking note of the fact that the first respondent had been a regular absentee and had suffered 29 earlier punishments, after having found that the punishment of dismissal from service was disproportionate, exercised discretion which is available even to the Labour Court under Section 11(A) of the Act and modified the punishment to one of compulsory retirement.



6.We find the reasoning given by the learned Single Bench to be perfectly in order, since the first issue which the Labour Court ought to have decided was whether the Management can be given a second chance, by restoring the position prior to the order of dismissal. The learned Single Bench had rightly taken note of the decision of the Hon'ble Supreme Court in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Shri Ram Gopal Sharma and others** reported in **AIR 2002 SC 643**, as also the decision in the case of **Indian Telephone Industries Limited and another Vs. Prabhakar H.MANjare and another** reported in **AIR 2003 SC 195**, which was taken note of in the case of **V.Manickam Vs. The Management, Tamil Nadu State Transport Corporation (TNSTC), Madurai Division - II Ltd., in W.P.[MD]No.14049 of 2019 dated 28.10.2011** and modified the order of punishment.

7.Mr.R.Rajamohan, learned Counsel appearing for the appellant placed reliance on the decision of the Hon'ble First Bench of this Court in the case of **M/s.Brakes India Ltd., Vs. Assistant Commissioner of Labour (Conciliation) II and another** reported in **1995 Vol.1 LLJ Page 1232**. It is submitted that the decision relied on by the learned Writ Court are factually different in as much as in those two decisions, the second application was filed seeking approval after the first application was rejected by the competent authority. Whereas, in the case of **M/s. Brakes India Ltd.**, the Hon'ble First Bench, has held that when opportunity to lead evidence has not been granted, the authority would have jurisdiction to issue direction to lead evidence.

8.We have carefully perused the decision in **M/s. Brakes India Ltd.**, and in paragraph No.18 of the said judgment, we find that in the said case, in the approval petition, the Management has made a specific prayer that in the event the authority is inclined to hold that the findings of the enquiry officer in the domestic enquiry is perverse, they should be permitted to lead additional evidence. The case on hand is totally different. In fact, the Joint Commissioner, has taken note of the evidence which was available before the enquiry officer and has recorded that the findings of the enquiry officer is perverse, the evidence which was made on the side of the workman was not taken into consideration and he also made an observation that he was justified in refusing the order of dismissal passed by the management against the workman. In spite of such pointed observations, the Joint Commissioner remanded the matter and gave another opportunity to the management. This in our considered view would be impermissible, because it is not a case where the appellant management pleaded to lead additional evidence. The



finding of perversity was on account of not taking into record / consideration, the evidence made by the workmen. Therefore, by virtue of the opportunity granted to the Joint Commissioner would tantamount to filling up the gaps and would cause irreparable prejudice to the workman. This aspect has also been vividly brought out in the case of **Jaipur Zila** that the Industrial Disputes Act does not empower the authority to dispose of the application iunder Section 33(2)(b) of the Industrial Disputes Act and thereafter, reopen the same, after affording further opportunity to the employer to conduct an additional enquiry.

9.The facts of the case on hand was also more or less akin to the facts therein because by virtue of the remand what has been permitted to be done by the Management is to set up a new case by leading evidence, when the perversity of the finding of the enquiry officer as recorded by the Joint Commissioner is on account of non-consideration of the evidence. Therefore, we are of the clear view that the order and direction issued by the learned Single Bench does not call for any interference.

10.For the above reasons, the Writ Appeal stands dismissed with a direction to the Transport Corporation to comply with the order made in the writ petition, within three [3] months from the date of receipt of a copy of this judgment. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

MR

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.

WEB COPY

+1 CC to Mr.R.RAJAMOHAN, Advocate (SR-19707[F] dated
21/06/2021)

+1 CC to Mr.T.LAJAPATHYROY, Advocate (SR-19827[F] dated
22/06/2021)

JUDGMENT MADE IN
W.A. [MD]No.1174 of 2021
21.06.2021

—

KM(29.06.2021) 5P 4C