



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2021
PRONOUNCED ON : 27.01.2022

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CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.14505 of 2005

E.Mani

...Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Div-I) Ltd.,
37, Mettupalayam Road,
Coimbatore-641 043.

2.The Presiding Officer,
Labour Court,
Coimbatore.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent herein pertaining to the order in I.D.No.155 of 2000 dated 22.08.2002 and to quash the order and consequently direct the first respondent to reinstate the petitioner in service with all consequential benefits, continuity of service with full back wages and other benefits.

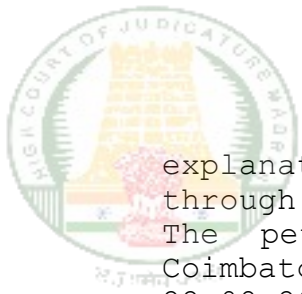
For Petitioner : Mr.V.Ajoy Khose
For Respondent-1 : Mr.A.Sundaravadanan

O R D E R

Heard the learned counsel for the parties.

2. The brief facts of the case are as follows:-

The petitioner herein, who was appointed as a driver on 08.04.1997, was subjected to departmental enquiry based on a charge memo dated 15.04.1998, wherein it was alleged that he had drew the bus rashly, negligently and carelessly, thereby causing an accident with a two wheeler, whereby the pillion rider died on the spot and the rider of the two wheeler, sustained injuries. The charges against the petitioner was held to be proved and on consideration of the petitioner's further



explanation, the petitioner was dismissed from his services through an order dated 10.09.1999, with effect from 06.06.1998. The petitioner raised a dispute before the Labour Court, Coimbatore in I.D.No.155 of 2000, which came to be dismissed on 22.08.2002. Assailing the award, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that the Labour Court had not re-appreciated the evidence of the witnesses and documents in the domestic enquiry, but had simply referred to the FIR and come to the conclusion, which is contrary to the requirements under Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as "ID Act"). It is his further submission that the Labour Court was not correct in denying the relief to the petitioner on the ground that since he has not completed 240 days of service, he was not a permanent workman.

4. The learned Standing counsel for the first respondent Transport Corporation submitted that since the other findings in the ID Act under Section 11 A have been complied with, it had come to the conclusion that the dismissal was justified, on the basis of the findings in the enquiry.

5. Insofar as the second contention of the learned counsel for the petitioner with regard to the Labour Court's denial of the relief to the petitioner on the ground that he was not a workman since he had not completed 240 days of continuous service is concerned, such a finding may not be correct. Section 2(s) of the ID Act, as well as the definition of a "workman" under the Industrial Employment (Standing Orders) Act, 1946, does not make any distinction between a permanent workman and a temporary workman. When the first respondent has chosen to initiate departmental disciplinary proceedings under their certified Standing Orders and dismissed him from service as a measure of punishment, it can be said that the Management had chosen to treat him as a workman for all purpose. Having done so, it may not be open to them to raise a contention before the Labour Court that the petitioner had not completed 240 days of service and therefore would not fall under the definition of workman for the purpose of raising an industrial dispute. What was required to test the employment of the petitioner, was to consider as to whether the petitioner was employed for hire or reward for doing his specified type of work and if the employee satisfies such a test, he would be deemed to be a "workman". This proposition has been reiterated by the Hon'ble Supreme Court in the case of Devinder Singh V. Municipal Council, Sanaur reported in 2011 (6) SCC 584 in the following manner:-



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"12. Section 2(s) contains an exhaustive definition of the term 'workman'. The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term 'workman'.

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

14. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an



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industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of 'workman'."

6. In the light of the aforesaid ruling and the discussions of this Court, the finding of the Labour Court that the petitioner is not entitled for any relief since he has not completed 240 days of continuous service, cannot be correct. Consequently, it requires to be held that the petitioner would be entitled to raise an Industrial Dispute before the concerned Labour Court.

7. Insofar as the first submission made by the learned counsel for the petitioner that the Labour Court had failed to re-appreciate the evidences before it, the impugned award was perused. In the award, the Labour Court had recorded the contentions of the parties but had not rendered any independent findings by re-appreciating the evidences in the domestic enquiry. There is a requirement on the part of the Labour Court to give detailed findings of the charges, by re-appreciating the evidence in the domestic enquiry and thereby render its finding as to whether the charge against the petitioner is proved or not? This is a mandatory requirement under Section 11A of the ID Act. In the case of *The Workmen of Firestone Tyre and Rubber Co. of India (P) Ltd., V. The Management and others* reported in 1973(1) SCC 813, the scope of Section 11A was dealt with in the following manner:-

"37. ...Therefore, the position is that even now the employer is entitled to adduce evidence for the first three before the Tribunal even if he had held no, enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in *Delhi and General Mills Co. Ltd*(1) No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary 'issue'.

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39. Having held that the right of the employer to adduce evidence continues even under the new section, it is needless to state that, when such evidence is adduced for the first time, it is the Tribunal which has to be satisfied on such evidence about the guilt or otherwise of the workman concerned. The law, as laid 'down by this Court that under such circumstances the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and that it has to decide for itself whether the misconduct alleged is proved, continues to have full effect. In (1) [1972] I.L.L.J. 180, such a case, as laid down by this Court, the exercise of managerial functions does not arise at all.

40. Therefore, it will-be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under section 11 A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under section 11 A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may 'hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the



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misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by section 11 A,

41-A. Another change, that has been effected by section 11A is the power conferred on a Tribunal to, alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accented by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimization. Under section 11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman any lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by section 11 A."

8. A similar view has been taken by a Hon'ble Division Bench of this Court in *Workmen of Engine Valves, Ltd., Madras V. Engine Valves Ltd., Madras* reported in 1983 (2) LLJ 232 in the following manner:-



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"32. These decisions can be of no assistance to management, because an Industrial Tribunal is duty bound to reappraise the evidence on record, and find out the correctness of the finding of misconduct. It cannot in a general manner touch upon the evidence without fully comprehending the evidence on record. No doubt a contention was raised resting upon the decision in *Girija Nandini v. Bijendra Narain*, that it is not the duty of the appellate Court, when it agrees with the view of the Trial Court on the evidence, either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court, and that expression of general agreement with reasons given in the decision which is under appeal, would ordinarily suffice. Such an approach is no longer available to a Tribunal constituted under the Industrial Disputes Act, subsequent to 15th December, 1971. A reappraisal of evidence contemplates an elaborate and meticulous consideration of the evidence on record and reasons to be given for upholding the findings rendered in the domestic enquiry. It is to remove the menace of arbitrariness, unreasonable attitude in holding the enquiry, unfair approach made in the conduct of proceedings etc. Labour Courts, are now enjoined to scrutinise carefully and find out whether the misconduct alleged is established or not. It is to safeguard the vital interests of the weaker section of the society, District Judges and Senior Judicial Officers are posted to function as Presiding Officers of Labour Courts, and they cannot in a haphazard or cursory manner touch upon the evidence on record in a general way and uphold the findings of the enquiry officer. This would be an unsatisfactory manner of discharging duties cast upon such officers. Having been assigned, to dispose of only cases pertaining to Industrial Disputes, they are duty bound to meticulously consider the evidence on record and devote their utmost attention and care in finding out whether the misconduct alleged had been made out on the materials adduced in the enquiry. If only there had been a reappraisal of the evidence on record, then the Tribunal would have given a valid reason, as to why the sole testimony of M.W. 1 alone should be acted upon in the instant matter, as against Ambalavanan.



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33. The learned single Judge also held, that there are only general observations, and in his view, it being not a criminal trial, there are no merits in the contention of the appellant about failure of the Labour Court in stating as to whose evidence it depends upon to hold the workmen guilty of the charges. This approach has ceased to exist nearly a decade back, and the cardinal duty of a Labour Court is to carefully analyse the evidence on record and given valid reasons for each one of the findings rendered by it. Any half-hearted cursory and general conclusions, for disposing of evidence on record, by using oft-repeated sentences, which could get in with any matter; and the entire evidence tendered by parties to proceedings being summarily and in a wholesale manner disposed of as unbelievable or bristles with inconsistencies and improbabilities as found by the enquiry officer, and hence claim is not made out etc., cannot any longer be countenanced or approved by this Court. Whatever limited discussion of evidence is made by the Labour Court in the concluding portion of its order, does not disclose any application of mind to the evidence on record, to the extent required under S. 11A of the Act. Hence, there being not only failure to consider the evidence on record, but also misreading of evidence, another illegality having been committed, the need has arisen for the matter being remitted to it, for proper disposal."

9. A learned Single Judge of this Court also took a similar view in the case of P.Gajendran V. The Presiding Officer, II Additional Labour Court, Chennai and another passed in W.P.No.16426 of 2011 as follows:-

"9. ... The first respondent / Labour Court after holding that the domestic enquiry was fair and proper, ought to have referred to the evidence as let in the domestic enquiry, instead of relying on the evidence let in before it. The first respondent / Labour Court ought to have also given reasons in detail to come to the conclusion that the domestic enquiry conducted was fair and proper. In this case, the first respondent / Labour Court had merely concluded as such without any supportive materials.



by this Court. The Labour Court shall endeavor to complete the entire exercise of hearing the arguments of the learned counsels and passing of the award, as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order. The Writ Petition stands ordered accordingly. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Div-I) Ltd.,
37, Mettupalayam Road,
Coimbatore-641 043.

+1cc to Mr.A.Sundaravadhanan, Advocate, S.R.No.5427
+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.4991

W.P.No.14505 of 2005

GPL(CO)
KKV/04/02/2022