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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.02.2022

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.25194 OF 2010

The Management of
Tamilnadu State Transport Corporation
(Coimbatore Division - II) Ltd.,
Erode Region,
Chennimalai Road, Erode - 1
represented by its Managing Director.

...Petitioner

Versus

1.The Presiding Officer,
Labour Court,
Salem.

2.C.Rajagopalan (Deceased)

3.R.Namma Selvam

4.R.Ramesh Kannan

5.R.Ramya

...Respondents

(R3 to R5 are substituted as LRs of the
deceased R2 as per the Order dated 31.10.2019
made in WMP No.12637 of 2019 in W.P.No.25194 of 2010)

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a writ of certiorari or
any other appropriate writ or order or direction in the nature
of writ calling for the records concerning with I.D.No.589 of
2004 dated 21.10.2009 on the file of the 1st respondent and
quash the same.

For Petitioner : Mr. A. Sundaravadhanam

For Respondents : R1 - Labour Court
R2 - Died

Mr.P.S.Kothandaraman for RR3 to 5



O R D E R

This writ petition is filed by the Management of the Tamil Nadu State Transport Corporation challenging the order dated 21.10.2009 passed by the first respondent/Labour Court in I.D. No. 589 of 2004.

2.(i) According to the writ petitioner, the second respondent (since deceased) was employed as Conductor in the petitioner Transport Corporation from 01.12.1978. When the second respondent was on duty in the bus bearing Registration No.TN33 N0687, the bus was checked by the checking Inspector and found that the second respondent wilfully did not issue tickets to 10 passengers who have boarded the bus at Odhiyur to Kuttaikadu after collecting the ticket amount of Rs.50/-. The checking Inspector also found an excess cash of Rs.71.05 in the cash bag of the second respondent.

2.(ii).Based on the report dated 19.04.2000 against the second respondent, the petitioner/Corporation has framed the charges on 22.04.2000 and the same was served to the second respondent. The second respondent has submitted his explanation but it was found not satisfactory. Therefore, the management has appointed an enquiry officer to conduct domestic enquiry against the second respondent. Based on the documentary enquiry report, petitioner/Corporation has come to the conclusion that the charges framed against the second respondent are proved. Therefore, a second show cause notice was served on 09.08.2000 along with the second respondent's previous records and calling him to submit his explanation as to 'why he should not be removed from service'. The further explanation offered by the second respondent was also found to be not satisfactory, therefore, the petitioner/ Management passed an order of punishment dated 10.11.2000 dismissing the second respondent from service from 13.11.2000

3. Challenging the said order dated 13.11.2000, the second respondent has filed I.D.No.589/2004. The Labour Court, on appreciation of the oral and documentary evidence, passed an order dated 21.10.2009 setting aside the order of dismissal dated 10.11.2000 and directed the petitioner-management to reinstate the second respondent in service without back wages and with continuity of service only for the purpose of pensionary retirement benefits and not for other benefits like increments, promotions etc. Aggrieved by the order dated 21.10.2009 of the labour court, the petitioner management has come up with this writ petition.

4. The learned counsel for the petitioner-management would contend that the order of dismissal was preceded by a valid



domestic enquiry. When the Labour Court has found that the domestic enquiry was conducted fairly and in a transparent manner, it ought not to have interfered with the order of dismissal passed by the petitioner. The labour court also did not notice that inspite of repeated notice, the second respondent did not participate in the enquiry and therefore, the Labour Court ought not to have modified the order of punishment passed by the Management.

5. According to the learned counsel for the petitioner management, the Checking Inspector had obtained the statement of the passengers, which was signed by 3 passengers. Further, endorsement was made to the effect that the remaining 5 female and 2 male passengers are illiterate. While so, the Labour Court, without any basis, has concluded that statement given by three passengers were obtained as one statement, no separate statements were recorded from each of the above passengers and even the names of the passengers are not mentioned in the report. The Labour Court also, without any basis, concluded that some of the passengers were to alight only at Kuttaikadu and there is chance that the second respondent would have issued ticket to them before their destination at Kuttaikadu is legally not sustainable. The Labour Court, presumed and assumed the circumstances in favour of the second respondent while modifying the order of dismissal. The labour court also failed to take note of the fact that the past service of the second respondent is not good and he had already suffered various punishments. Taking note of the previous records of the second respondent, which had brought disrepute to the corporation, the order of punishment was rightly passed by the management. However, the labour Court, on sympathetic consideration, awarded continuity of service for the purpose of receipt of terminal benefits and pension by the second respondent. In the event, the award passed by the labour court is contrary to evidence made available and therefore, the learned counsel for the petitioner prayed for allowing this writ petition.

6. Per contra, the learned counsel appearing for the second respondent submitted that the second respondent was on duty in the bus belonging to the petitioner-management on 19.04.2000. During his employment as conductor in the bus, 10 passengers have boarded at Odhiyur bus stand and the second respondent issued tickets to three passengers. The Checking Inspector boarded the bus at Echipatti at 2.45 am for checking and at that time they found 10 passengers were not issued with tickets and an excess amount of Rs.71.05/- was found in the second respondent's cash bag. According to the second respondent, the destination place i.e. Kuttaikadu is about 1/2 a kilometre distance from Echipatti. Due to the crowd he was unable to provide tickets for the above said 10 passengers.



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Even when the second respondent was in the process of issuing tickets, the bus halted in the next stop at Echipatti. In this context, the labour court on consideration of the enquiry notice under Ex.R4 to R9 concluded that the enquiry officer based his findings mainly on the strength of statement of the management witnesses namely inspecting staff. The Labour court also concluded that the statement of passengers, who allegedly gave the amount to purchase ticket from the second respondent and did not receive the tickets would show that only 3 passengers have signed the statement and an endorsement was made on behalf of 5 female passengers and 2 male passengers. The labour court has taken note of the fact that even the statement of three passengers were reduced in the form of one statement besides the name of the three passengers has also not been included. Having regard to the above lacuna in the evidence projected by the petitioner management and the explanation offered by the second respondent to the show cause notices sent by the management, the labour court has directed reinstatement without back wages and continuity of service for the purpose of pensionary-retirement benefits. Such a well considered order passed by the labour court need not be interfered with by this Court and thus he prayed for dismissal of the writ petition.

7. Heard the parties concerned and perused the material.

8. The point for consideration in the present writ petition is whether the order passed by the labour Court, setting aside the order of dismissal passed by the management and directing reinstatement without backwages but with continuity of service for the purpose of pension and retirement benefits is sustainable under law.

9. The second respondent is employed as Conductor in the Petitioner-Corporation. While he was on duty as Conductor in the bus bearing registration No.TN-33N-0687 on 19.04.2000, the bus was checked by Checking Inspectors in a place called Echipatti. At the time of examination, it was noticed that the second respondent had received ticket fare from 10 passengers but did not issue tickets to them. It was also noticed that there was an excess fare of Rs.71.05. In this context, on the basis of the report of the inspecting team, a notice was issued to the second respondent.

10. The charge against the second respondent is that he did not issue tickets to 10 passengers who boarded the bus at Odhiyur to Kuttaikadu after collecting ticket fare from them. The explanation offered by the second respondent is that the distance between Odhiyur, where the 10 passengers have boarded the bus, and Echipatti, where the ticket examining team examined the second respondent is only half-a-kilometer. According to



the second respondent, even before he could issue tickets or was in the process of issuing the tickets, the bus reached the stop called Echipatti where the checking team has resorted to an examination and alleged that the second respondent did not issue tickets to them. The said explanation of the second respondent was concluded as a reasonable explanation by the labour court and therefore it had set aside the order of dismissal and modified it.

11. Before the labour Court, on the side of the petitioner management as well as the second respondent, no witness was examined. In fact, the second respondent did not turn up to the enquiry. On behalf of the petitioner management, 9 documents were marked as Exs. R1 to R9 and all those documents are nothing but report of the inspection staff, Ex.R1, show cause notice issued by the management, explanation of the second respondent, second show cause notice and Ex.R9, the order of dismissal dated 10.11.2000. On perusal of the aforesaid documentary evidence, the labour Court noticed that the statement of three passengers were obtained as a single statement, where, even the name of the passengers were not furnished. The labour court also pointed out that the order of punishment of dismissal from service imposed on the second respondent is harsh. The relevant portion of the order passed by the labour court is extracted herein below:-

"7.It is seen from Ex.R7 the finding of the enquiry officer, he based his finding on the basis of statement given by the management witnesses who are the inspecting staff and basic report, invoice, the statements of passengers and the collection sheet. A perusal of statement of passengers who allegedly gave ticket fair to the petitioner and did not receive any tickets would show that only 3 passengers signed in the statement. It is endorsed in the statement that 5 female passengers and two male passengers are uneducated passengers. So, as seen from the above statement it is seen that only statement 3 passengers were obtained as one statement. Separate statements were not recorded from each of the above passengers. Even the name of the other passengers are not mentioned in the basic report and in the statement given by other passengers. These passengers boarded the bus at Outhiyur to go for Kuttaikadu. As seen from the invoice the same was incomplete. So, the explanation on the side of the petitioner that since the invoice was not completed and the passengers who boarded the bus at Outhiyur were to alight from the bus only at Kuttaikadu, there is a chance that the petitioner would have issued tickets to them before their destination at Kuttaikadu is acceptable. But



15. On taking into consideration the above facts, this Court is of the view that the second respondent deceased employee deserve the punishment. However, considering the 22 years of long service rendered by the employee in the petitioner corporation, this Court is of the view that the said punishment is excessive and it is disproportionate and it requires modification.

16. Moreover, the second respondent died during the pendency of the writ petition and his legal heirs namely wife and two children are entitled for pensionary benefits for the 22 years of service rendered by the deceased employee / second respondent.

17. Accordingly, the award dated 21.10.2019 passed by the first respondent in I.D.No.589 of 2004 dated 21.10.2009 is set aside, holding that the second respondent is guilty of the charges levelled against him. As regards the punishment of dismissal from service imposed against him by the petitioner-management, it is modified to the effect that the second respondent is not entitled for reinstatement in service, however, the period of dismissal from service namely 10.11.2000, shall be counted for the purpose of pensionary benefits. The writ petition is partly allowed. No costs.

Sd/-

Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

AT

To

The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.P.S.Kothandaraman, Advocate Sr.No.7503

W.P.No.25194 of 2010

SMI (CO)
RVM(21/06/2022)