



WEB COPY



W.P.No.37952 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.37952 of 2016

and

W.M.P.Nos.32549 of 2018 & 8858 of 2018

The Management,
Tamil Nadu State Transport Corporation (CBE) Ltd.,
37, Mettupalayam Road,
Coimbatore. ... Petitioner

Vs.

1.A.Ramaganesh
2.The Special Deputy Commissioner of
Labour (Conciliation),
DMS Compound,
Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the 2nd respondent in A.P.No.146/2011 dated 09.05.2016 and to quash the same.

For Petitioner	: Mr.A.Sundaravadhanan
For R1	: Mr.A.Deivasigamani
For R2	: Mr.G.Nanmaran Special Government Pleader



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ORDER

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The order passed by the 2nd respondent / The Special Deputy Commissioner of Labour (Conciliation) in A.P.No.146/2011 dated 09.05.2016 is under challenge in the present writ petition.

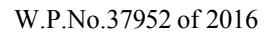
2. The petitioner is the Tamil Nadu State Transport Corporation (Coimbatore) Limited. The 1st respondent is a workman, who served as a Conductor in the petitioner / Corporation. A charge memo was issued against the 1st respondent workman with an allegation that he failed to issue tickets to the passengers after collecting ticket fair. A charge memo was issued and an enquiry was conducted. Based on the findings of the Enquiry Officer, the punishment of dismissal from service was imposed. The writ petitioner filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 and the Approval Petition was adjudicated by the 2nd respondent / The Special Deputy Commissioner of Labour (Conciliation). Issues were formed based on the principles laid by the Hon'ble Supreme Court of India in ***Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd., and Another*** case and in respect of issue Nos.3, 4 and 5, it was decided in favour of the petitioner / Management. Regarding the issue Nos.1



and 2, the 2nd respondent made a finding that the passengers travelled in the bus were not examined by the Enquiry Officer and consequently, the 1st respondent / Workman lost his opportunity to cross examine the passengers. Therefore, the second issue was decided by holding that there is no evidence to establish the charges.

3. This Court is of the considered opinion that the nature of departmental disciplinary proceedings cannot be compared with the criminal proceedings. Strict standard of proof is required to convict a person under Criminal Law. But preponderance of probability is enough to punish an employee under the Discipline and Appeal Rules. Thus, the standard of proof required for a criminal case and departmental disciplinary proceedings cannot be compared with. Practical approach is required in such circumstances, where the department disciplinary proceedings are initiated against an employee.

4. In the present case, one cannot expect the passengers, who travelled in the bus will depose before the Enquiry Officer after several months or years. However, there will be a report by the Checking Inspector, who



5. In the present case, the learned counsel for the petitioner states that checking Inspector recorded the statement of the passengers, who intimated that the 1st respondent / workman received the ticket fair but not correct tickets and issued fake tickets. All these aspects are to be noted and findings are to be recorded by the Commissioner of Labour.



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6. Perusal of the order impugned reveals that the 2nd respondent has not recorded any findings in these aspects and blanketly formed an opinion that the passengers travelled in the bus were not examined and therefore, there is no evidence to prove the charges. Such a finding is perverse and therefore, this Court is inclined to remand the matter before the 2nd respondent with reference to the issues No. 1 and 2 alone.

7. Accordingly, the order impugned passed by the 2nd respondent in A.P.No.146 of 2011 dated 09.05.2016 is quashed with reference to issue Nos.1 and 2 alone and the matter is remanded back for fresh consideration. Accordingly, the 2nd respondent is directed to conduct a detailed enquiry with reference to the records available and if necessary by calling the entire records from the writ petitioner / Management and thereafter, decide the issue Nos.1 and 2 on merits and in accordance with law within a period of four (4) months from the date of receipt of a copy of this order.



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8. With the above direction, the Writ Petition stands allowed-in-part.

No costs. Consequently, connected Miscellaneous Petitions are closed.

22.11.2022

Jeni

Index : Yes

Speaking order

To

The Special Deputy Commissioner of
Labour (Conciliation),
DMS Compound,
Chennai.



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S.M.SUBRAMANIAM, J.

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