



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P. (MD)No.13034 of 2015

and

M.P. (MD)No.2 of 2015 and

W.M.P. (MD)No.2029 of 2017

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Karaikudi Region,
Marudhupathi,
Karaikudi-630 001.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Karaikudi Region,
Marudhupathi,
Karaikudi-630 001.

... Petitioners

vs.

1.S.Maran

2.The Presiding Officer,
Labour Court, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the award passed by the Respondent No.2 herein, dated 25.06.2014, in I.D.No.47 of 2012, to quash the same.

For Petitioners : Mr.D.Sivaraman

For R1 : Mr.S.Anwar Sameem

for Mr.T.Antony Arul Raj

For R2 : Labour Court

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to call for the records relating to the award passed by the Respondent No.2 herein, dated 25.06.2014 in ID No.47 of 2012, to quash the same.

2.The brief facts of the case are that the Tamil Nadu State Transport Corporation has filed this Writ Petition. The first respondent employee is working as Conductor on 24.02.2014. A charge



memo was issued levelling the charge against the first respondent. The charge is on 01.02.2004, when the first respondent was on duty in Bus No. TN 63 N 0669 from Kallal to Thirupathur trip, he received Rs.3.50/- each from four passengers, totally Rs.14/-. By way of the above Act, he has misappropriated a sum of Rs.7/- by not issuing two tickets. The first respondent was placed under suspension on 24.02.2004 and a charge memo, dated 24.02.2004 was issued. The first respondent has not submitted any explanation or reply. The first respondent fully and effectively participated in enquiry that was conducted on 02.04.2004 and 08.04.2004. The Enquiry Officer submitted his report on 09.04.2004, holding the charges are proved. The second notice was issued on 28.04.2004, calling for objections on the findings of the Enquiry Officer.

3.The first respondent has not submitted any reply for the enquiry report and he did not report for duty for a long time. Hence, it was posted to his last moved residential address. The first respondent did not give any objections. Therefore, the disciplinary authority issued a second notice on 17.05.2004, proposing the punishment of dismissal from service and the same was returned as underved and therefore, the same was placed in notice board from 04.06.2004 to 14.06.2004. The first respondent had suffered 39 earlier punishments in his 15 years of service. The disciplinary authority passed final orders on 13.07.2004, thereby, dismissing the first respondent, which was put to challenge before the Labour Court after a lapse of 7 years.

4.In the meanwhile, the dismissal order was approved by the Joint Commissioner of Labour in Approval Petition No.198 of 2004. The Labour Court after perusing the materials has passed the final order on 05.06.2014 directing the Corporation to reinstate the first respondent with continuity of service excluding the period of delay between 14.07.2004 and 16.06.2011 and declined backwages and other benefits. Aggrieved over the same, the Corporation has filed this Writ Petition.

5.Heard Mr.D.Sivaraman, learned Counsel appearing for the petitioner and Mr.S.Anwar Sameem, learned Counsel appearing for the first respondent.

6.It is seen that the first respondent has not received the charge memo as well as the final order and has refused this. Even though the charge memo was returned, the first respondent has participated in the enquiry and has examined and cross examined the witnesses. The first respondent has filed the I.D. after a lapse of 7 years.



7.The contention of the Corporation is that the I.D. filed after a period of 5 years will be hit by laches and delay. However, there is no limitation prescribed in the Act. Therefore, this Court is inclined to reject the arguments of the Corporation.

8.The second contention put forth by the Corporation is that the Labour Court has held that the Enquiry Officer has not examined the passenger and cash bag. The Labour Court has erroneously declared that it is necessary to check the cash bag. In number of judgments, it has been held that the cash bag need not be checked. Even though there is any misappropriation, the amount will not be kept in the cash bag but in the pocket of the erring employee. That is why it has been held that it is not necessary to check the bag.

9.As far as the evidence of the passenger is concerned, it is difficult to trace the passenger and bring them to enquiry. Therefore, it is not possible for the management to produce the passengers as witness. Even though it has been produced in some of the cases, it has been held that such witnesses are not properly possible. Therefore the impugned order is incorrect and therefore, the statement of the Corporation is accepted.

10.The contention of the first respondent is that the Checking Inspector has fined the two ticket list passengers and each passenger was fined Rs.500/-, which is totalling to Rs.1000/- and the same was collected. The Checking Inspector, namely, Velayudham, has deposed before the domestic enquiry in the cross examination. He has categorically admitted that the 2 passengers have paid the penalty of Rs.500/- each, which is totaling to Rs.1,000/- and the same was collected. If any ticket list passengers is there, the duty of the Conductor is not to allow such passenger to travel. The first respondent has allowed such passengers to travel without tickets. There is negligence of duty. But as far as the statement of the Checking Inspector is concerned, the Checking Inspector has collected the penalty from the said 2 passengers which would show it is not the mistake of the first respondent and there is no misappropriation.

11.This Court would rather say that there is no acceptable evidence for misappropriation. If it is only negligence of duty, the order of dismissal from service would be disproportionate. The contention of the petitioner is that earlier there are 39 other delinquencies against the first respondent and 10 cases of misappropriation are also there. The first respondent already attained superannuation in the year 2016 itself.



12. Therefore, this Court is of considered opinion that the punishment ought to be modified based on the above said facts and circumstances. Therefore, the punishment of compulsory retirement would be appropriate. The punishment above is modified and the petitioner is directed to modify the punishment and disburse all available terminal benefits to the first respondent. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (As)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

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, Madurai.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-6885[F] dated 17/02/2022)

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-6709[F] dated 17/02/2022)

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MGJ(07.03.2022) 4P 4C