



WEB COPY

W.P.(MD)Nos.397 and 16777 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.01.2022

Pronounced on : 08.03.2022

CORAM

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

W.P.(MD)Nos.397 and 16777 of 2014

and

M.P.(MD)No.1 of 2014

W.P. (MD)No.397 of 2014:

R.Ravichandran

... Petitioner

vs.

1.The President Officer,
Labour Court, Tiruchirapalli.

2.The Management,
Tamil Nadu State Transport Corporation,
Kumbakonam Limited IV,
Pillai Thanneerpandal, Thirumayam Road,
Pudukkottai-622 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the award, dated 05.09.2012, passed in I.D No.86 of 2002 by the 1st respondent in so far as the award of impugned compensation from the date of appointment to the date of superannuation instead of granting the relief of back wages and all other attendant benefits from the date of illegal termination to the date of superannuation on 31.01.2012 and to quash the same and consequently to direct the second respondent to pay the petitioner the back wages from the date of his illegal termination to the date of his superannuation and all other attendant and terminal benefits and award costs.

For Petitioner : Mr.N.Balakrishnan

For R1 : Labour Court

For R2 : Mr.D.Sivaraman

W.P. (MD)No.16777 of 2014:

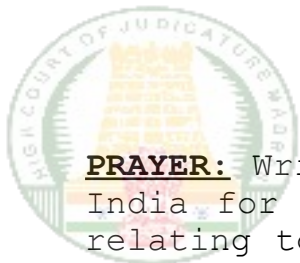
The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division IV) Limited,
Thirumayam Road, Pudukkottai.

... Petitioner

vs.

1.R.Ravichandran
2.The Presiding Officer,
Labour Court, Tiruchirapalli.

... 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 impugned order passed by the 2nd Respondent herein, dated 05.09.2012 in I.D No. 86 of 2002 and to quash the same.

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For Petitioner : Mr.D.Sivaraman
For R1 : Mr.N.Balakrishnan
For R2 : Labour Court

COMMON ORDER

There are two Writ Petitions. The writ petition in W.P.(MD) No.16777 of 2014 is filed by the management and the employee has filed W.P.(MD)No.397 of 2014, challenging the award in I.D.No.86 of 2002, dated 05.09.2012.

2.In the award the Labour Court has held as under:

"In the result, the Industrial Dispute is partly allowed, thereby the order of dismissal passed by the respondents against the petitioner on 29.08.2001 is set aside and the respondent is directed to give the compensation at the rate of 15 days salary per year from the date of appointment till the date of superannuation within 60 days, in case of default, the respondent shall liable to pay the said amount with the interest of 6% from this date of order till the date of realization."

3.The petitioner Ravichandran has filed this Writ Petition to set aside that portion of the award, where it has granted compensation and consequently directed the respondents to pay backwages and all other attendant benefits from the date of illegal termination to the date of superannuation on 31.01.2012. The management has filed the Writ Petition W.P.(MD)No.16777 of 2014, to set aside the entire award.

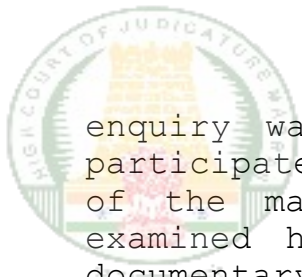
4. The brief facts of the case are the employee Ravichandran was working as Conductor in the petitioner Transport Corporation. On 04.11.2000, a charge memo was issued levelling charges as under:

"i)That on 13.09.2000, while he was on duty in the bus No.255 from Salem to Pudukkottai, he has altered the ticket fare from Rs.32/- to Rs.22/- in Ticket No.91615.

ii)By altering the above amount, he has misappropriated Rs.10/-.

Iii) Violation of Standing order 16(c)"

5.The allegation is that the petitioner has altered the ticket fare from Rs.32/- to Rs.22/- and thereby, misappropriated Rs.10/-. The delinquent had submitted an explanation and since the Transport Corporation was not satisfied with the explanation, a domestic

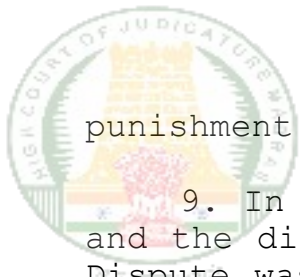


enquiry was conducted. The petitioner has fully and effectively participated in the enquiry. One witness was examined on the side of the management and 4 documents were marked, the delinquent examined himself as defence witness and he did not produce any documentary evidence. On 15.02.2001, the enquiry report was submitted upholding the charges are proved and based on the enquiry report, a second show cause notice was issued on 10.08.2001. Thereafter, the disciplinary authority passed a final order, dated 29.08.2001, by dismissing him from service. Aggrieved over the dismissal order, the delinquent raised an industrial dispute I.D.No.86 of 2002 before the Labour Court. The delinquent examined himself and has marked 9 documents. On the side of the management, 13 documents were produced. The Labour Court has held that the delinquent has admitted that he made alterations in the ticket, which was proved through documentary evidence. Hence, the charge of altering the ticket was approved but the charge of misappropriation was not proved and on that basis by invoking Section 11-A of the Industrial Disputes Act, the Labour Court has held that the punishment imposed to the delinquent was disproportionate and further directed the Corporation to pay compensation. The management is aggrieved by the order and hence the present Writ Petition is filed. The delinquent is aggrieved by the order, since only compensation was awarded and backwages was not awarded for the period from 2001 onwards.

6. Heard Mr. N. Balakrishnan Learned Counsel for the petitioner employee and Mr. D. Sivaraman the Learned Counsel for the Management and perused the material records.

7. The contention of the employee / delinquent that the Labour Court has come to the conclusion that only the tickets were altered and the misappropriation was not proved, then the Labour Court ought to have granted backwages and not the compensation. But the contention of the management is that when the Labour Court has rendered a finding that the tickets were altered then misappropriation is also proved, then the Labour Court ought to have dismissed the I.D.

8. On the date of hearing the respondent management has placed on record the entire antecedents of the delinquent. The delinquent was alleged misappropriation on several occasions and 17 delinquencies were raised against the delinquent. In that 8 misappropriation charges on various occasions were raised. On 02.06.2000, misappropriation for Rs.11.50/- was raised and stoppage of increment for 18 months was imposed as punishment and punishment were challenged before the Labour Court and the punishment was confirmed by the Labour Court. Again on 12.07.2000, misappropriation of Rs.12/- was alleged and a punishment of one year increment cut was awarded and the said punishment was confirmed by the Labour Court. Likewise all the misappropriation had ended up in



punishment and were confirmed in appeal or before Labour Court.

9. In the present case the charge memo was issued on 04.11.2000 and the dismissal order was passed on 21.08.2001 and the Industrial Dispute was raised in the year 2002 and the petitioner has attained superannuation in the year 2012. The allegation against the delinquent is that he has altered the ticket fare from Rs.32/- to Rs.22/- in ticket No.91615. In order to prove the allegation of misappropriation the management has taken a defence that since the ticket has been altered, the delinquent has misappropriated Rs.10/-. The delinquent has admitted that he has altered the ticket. Even the Labour Court has taken into consideration that it is admitted fact by the both delinquent and the management that the ticket has been altered.

10. The contention of the management is that once it is accepted, then misappropriation follows. The Labour Court has stated a reasoning that once the ticket fare has been altered, it cannot be stated there is misappropriation. The delinquent has not stated any reasons for taking such a plea. The Labour Court has not stated any reasons for coming to such conclusion. If the ticket is altered the consequence is that the delinquent misappropriated the amount. In misappropriation cases, especially in domestic enquiry, preponderance of probability is taken as a standard to prove. Then it is on the delinquent to prove he has not misappropriated since the burden is on the delinquent.

11. Therefore, this Court is of the considered view that based on the principles of preponderance of probability, the alteration of ticket fare amounts to misappropriation. Therefore, this Court is setting aside the order of the Industrial Dispute in I.D.No.86 of 2000, dated 05.09.2012. Since the impugned order is set aside the consequential benefit granted by the Labour Court is also set aside. The delinquent is not entitled to any compensation or backwages.

12. The Writ Petition filed by the management in W.P.(MD) No.16777 of 2014 is allowed and the Writ Petition filed by the delinquent in W.P.(MD)No.397 of 2014 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

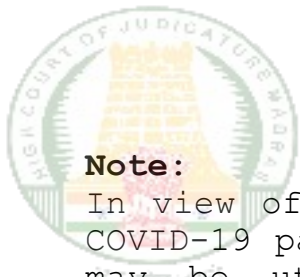
Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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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 President Officer,
Labour Court, Trichy

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-10524[F] dated 08/03/2022)

+1 CC to M/s.N.BALAKRISHNAN, Advocate (SR-11104[F] dated 10/03/2022)

Order made in
W.P. (MD) Nos. 397 and 16777 of 2014
08.03.2022

IMS (CO)
TR(21.03.2022) 5P 4C