



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.02.2022

DELIVERED ON: 09.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.5368 of 2015

T.Packirisamy

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.The Management of
Tamil Nadu State Corporation (Kumbakonam) Limited,
Rep.by it's Managing Director,
Kumbakonam.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records from the first respondent Labour Court relating to the impugned award dated 02.09.13 passed by the first respondent in I.D.No.146 of 2007, quash the same and consequently to direct the second respondent to reinstate the petitioner in service with back wages and continuity of service and all other attendant benefits and award cost.

For Petitioner	: Mr.S.Arunachalam
For R-1	: Labour Court
For R-2	: Mr.D.Sivaraman

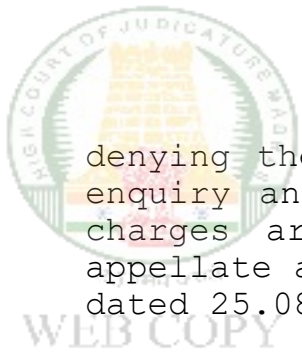
ORDER

This Writ Petition has been filed to quash the impugned order dated 02.09.2013 passed in I.D.No.146 of 2007 and consequently directing the second respondent/Corporation to reinstate the petitioner into service with back wages and continuity of service.

2. The brief facts of the case are that the petitioner was employed as permanent Conductor from 1.06.1978 then promoted as Senior Conductor and was serving the second respondent Corporation. On 23.08.1988 when the petitioner was in duty in a bus running



between Pattukottai and Memisal, the bus reached the stop namely Kottaipattinam which was also a fare stage. The contention of the petitioner is that large number of passengers boarded into the bus at Kottapattinam stop to go to Memisal. The fare for travelling from Kottapattinam to Memisal was Rs.1/- and the next stage was Jagathapattinam which is just 1 km from Kottaipatinam. More than fifty passengers boarded into the bus at Kottaipattinam and Jagathapattinam stages alone and the distance between the Jagathapattinam and Memisal was 6 km and the petitioner was constrained to complete the issuing of tickets to the passengers. When the place called Muthanenthal was reached, the bus was stopped, three Checking Inspectors and one Traffic Inspector boarded in to the bus and the petitioner has not completed the issuing of tickets to all the passengers, since the petitioner was having time to issue tickets before it reaches Memisal. But the Checking Inspectors asked the petitioner to give ticket book and invoice. The petitioner replied that he has not yet completed in issuing tickets but the Checking Inspectors refused to accept the same and insisted to give the invoice by completing the same. On checking, it was found that two women passengers were in the front side of the bus did not have tickets and the Checking Inspectors enquired about the same and the petitioner replied he had not received any fare from them and so he has not issued any tickets. By the time, the place Memisal reached and the said two women passengers who were not issued tickets also got down from the bus and went away. The contention of the petitioner the Checking Inspectors did not allow to get fare from them and issue tickets to them. Thereafter, the bus also reached the terminal stop at Memisal. The Checking Inspectors had taken three tickets by writing fare amount of Rs.1/- in each ticket and also one ticket by writing the fare amount of Rs.9/- further they counted the amount in the cash bag and the balance amount payable to one passenger was also included in the amount in the cash bag. The petitioner replied to the Checking Inspectors the above facts but they refused to accept the same and counted the entire amount in the cash bag. Thereafter, the petitioner was directed to write a written statement as what had happened but the Checking Inspectors directed the petitioner to write as dictated by them. Since the petitioner declined, the Checking Inspectors received the incomplete statement from the petitioner without allowing the petitioner to complete the written explanation. The Checking Inspectors also issued defective memo to the petitioner making false allegations against the petitioner. Thereafter, the petitioner was issued with charge memo dated 02.03.1988 alleging after collecting Rs.1/- from one woman passenger for her travel from Jagathapattinam to Memisal and also Rs.9/- as luggage fare for nine bags of rice brought by her, failed to issue travel and luggage fare to her and the petitioner after collecting fare amount of Rs.2/- from two passengers failed to issue tickets to them thereby, misappropriated Rs.12/- and that the excess amount of Rs.31.50/- was found in the cash bag. The petitioner submitted explanation dated 11.03.1988



denying the charges but the second respondent ordered for domestic enquiry and the Enquiry Officer vide report dated 10.05.1988 held charges are proved and thereafter the second respondent who is appellate authority dismissed the petitioner from service vide order dated 25.08.1988.

3. The second respondent filed an Approval Petition in A.P. No. 105/1999 before the Tribunal seeking approval of dismissal. After enquiry, the Tribunal vide order dated 26.06.1999 declined to grant approval for the dismissal. Thereafter, the second respondent instead of reinstating the petitioner filed W.P. (MD). No. 16393 of 1993 and the Writ Petition was allowed by the High Court by its order dated 13.09.2001. Since the petitioner was suffering without employment for more than thirty years, since he was under financial constrain, he raised I.D. belatedly. After hearing the arguments of both the sides, the ID was dismissed vide order dated 02.09.2013. Aggrieved over, the present Writ Petition has been filed.

4. The respondents have not filed any counter but substantiated their stand based on the counter filed before the Tribunal and the impugned order.

5. Heard Mr.S.Arunachalam, learned counsel for the petitioner and Mr.D.Sivaraman, learned counsel for the second respondent and peruse the materials placed on records.

6. The impugned order passed by the Labour Court has held in the Domestic Enquiry one of the ticket examiner was examined as witness and he speaks about the misconduct of the petitioner. He further stated he has inspected the bus about 1 ¼ kilometer ahead of Memisal Village and there were 69 passengers and the capacity of Bus was 57. He found one female passenger was not having ticket and she stated that she had given Rs.10/- for her and for her luggage and the Conductor has not issued any ticket. Two male passengers had represented that they had paid Rs.1/- each to the Conductor, but the Conductor did not issue any tickets and they have boarded the bus in Jagathapattinam Village. The distance between the Jagathapattinam Village and Memisal is 6 km. One of the passengers gave a statement before the Domestic Enquiry. The Driver of the Bus also gave a statement to the Enquiry Officer which is Exhibit P-2. Further stated that he had examined the cash bag of the petitioner and found Rs.31.50/- in excess. The petitioner examined three witness before the Domestic Enquiry and D-2 and D-3 stated that they were travelling in the Bus with some luggage and they did not purchase the tickets by paying the fare. But before they could purchase the tickets, the examiner inspected the Bus threatened to report the matter to Police and they also scared and got off from the Bus and went away. The next day they met the petitioner and offer to pay the tickets, the petitioner advised them to report the matter to the



the Bus and gave Rs.50/- to the petitioner and bought seven tickets at Rs.1/- per ticket. The Conductor did not return the balance. When the Bus reached Muthanenthal Village, four or five Officials boarded the Bus and the Bus reached the destination and he got off the Bus, but forgot to collect the balance. The Domestic Officer did not believe the evidence given by DW2 and the Labour Court was also of the opinion the evidence of DW2 is highly improbable that if he had actually given Rs.50/-, he would not have forgotten to collect the balance, since the balance amount is big sum of money in 1988 and normally, persons would not forget to collect the balance. However the petitioner submitted that it is assumption and presumption. This Court is of the considered opinion that the principle of preponderance of probability is applicable for domestic enquiry and on that basis DW2 witness is not a reliable witness.

7. There is a recording in the Labour Court award that whatever the case may be, the petitioner has admitted that there was some money in excess and he has failed to give satisfactory explanation. Even though the plea of latches was raised by the respondent Corporation, the Labour Court has given a finding based on the facts itself and this Court is convinced the highly improbable evidence of DW2 coupled with the admission of the petitioner that he has excess money in his bag. Even though there are several cases where checking of bag is not necessary, in this present case, the Checking Inspectors has checked the bag and has deposed the Conductor was having excess money. The petitioner was dismissed on 25.08.1988 and has raised I.D. in the year 2007, after nearly 19 years the petitioner has raised I.D., hence on the ground of delay and latches the petition ought to be dismissed. Even if any the plea is considered on equity, the respondents would end up in paying the entire amount with interest, which would be total injustice, since the respondents corporation is already under financial strain. Considering all these facts, this Court is not inclined to entertain the Writ Petition and hence the Writ Petition is dismissed confirming the order of the Labour Court.

8. For the above reasons, this Writ Petition stands dismissed. There shall be no order as to costs.

Sd/-

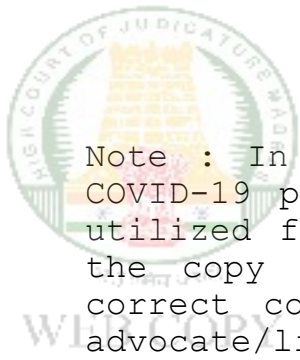
Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

Nsr



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

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.The Management of
Tamil Nadu State Corporation (Kumbakonam) Limited,
Rep.by it's Managing Director,
Kumbakonam.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-10754[F] dated 09/03/2022)

W.P. (MD) .No.5368 of 2015
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KG(CO)
KB(17.03.2022) 5P 4C