



W.P.(MD)No.2120 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2022

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.2120 of 2016

and

W.M.P.(MD)Nos.7199 & 1849 of 2016

The General Manager,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Ltd.,
Marudhupathi,
Karaikudi.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Madurai.

2. S.Ramachadran

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relates to the award passed by the first Respondent herein, dated 20.05.2014 in ID.No.9 of 2012, quash the same.



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For Petitioner : Mr.D.Sivaraman
For R1 : Labour Court
For R2 : Mr.S.Jawahar

ORDER

This Writ Petition is filed for Writ of Certiorari to quash the award passed by the first respondent, dated 20.05.2014 in ID.No.9 of 2012.

2. The second respondent is working as a Conductor in the petitioner Transport Corporation. On 02.09.2003, a Charge Memo was issued levelling charges that on 28.08.2003, when the second respondent was on duty as Conductor failed to issue tickets to passenger who travelled from Pandiyoore to Akkirameesai Vilaku despite the receipt of Rs.3.50/- as ticket fare. The second charge is that he failed to issue tickets to four passengers travelled from Pandiyoore to Sithanendai despite the receipt of Rs.3.50/- each (Rs.14/-) and he failed to collect ticket fare from Pandiyoore to Sithanendai, thereby misappropriated a sum



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of Rs.20/- and committed misconduct as per Clause 16 (c) of the Standing order. The second respondent submitted an explanation stating that the passengers were under intoxicated mood and did not purchase tickets. Since the explanation was not satisfied, an Enquiry Officer was appointed. After affording adequate opportunity to the second respondent, the Enquiry Officer has held the charges are proved, vide report, dated 23.10.2013. The Enquiry Report was furnished to the second respondent and directed him to submit objections to the Enquiry Report. But the second respondent did not submit any objection to the enquiry report and the disciplinary authority accepted the findings of the Enquiry Officer and issued show cause notice to the second respondent on 10.11.2013 by proposing the punishment of dismissal from service. The second respondent submitted a reply to the second show cause notice on 25.11.2003.

3. The contention of the petitioner Corporation is that the second respondent did not raise any defence or ground to vary with the proposed punishment and finally imposed the punishment of dismissal



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from service, vide order, dated 24.02.2004. The second respondent was paid one month wages of Rs.6,649/- along with the final order.

Aggrieved over, the second respondent raised an Industrial Dispute in ID.No.9 of 2012. The further contention of the petitioner Corporation is that the second respondent herein neither examined any witnesses nor produced any documents. The Management did not examine any witnesses, however produced 12 documents. Pending Industrial Dispute, the second respondent made an endorsement before the first respondent that he did not challenge the fairness of the domestic enquiry. The first respondent through his award, dated 20.05.2014 held that non-examination of the passengers in the domestic enquiry and non-checking of cash bag to ascertain the availability of excess cash are fatal to the case of the Management. Further, the first respondent held that it is not the charge against the second respondent that he has misappropriated a sum of Rs.20/-, but the charge was that he attempted to misappropriate Rs.20/, actually there is no misappropriation. For these reasons the first respondent directed the Management to reinstate the second respondent in service with continuity of service excluding the delay period and



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without backwages. Aggrieved over the same, the present writ petition has been filed.

4. The learned Counsel appearing for the second respondent relied on the petition filed before the Labour Court and submitted that the Management ought to have examined the passengers and also ought to have checked the cash bag. The second respondent was not granted adequate opportunity. The Labour Court has rightly held that the second respondent attempted to misappropriate Rs.20/- and there is no actual misappropriation and the punishment imposed by the Corporation is disproportionate. Therefore, prayed to confirm the order of the Labour Court and dismiss the writ petition.

5. Heard Mr.D.Sivaraman, learned Counsel appearing for the petitioner, Mr.S.Jawahar, learned Counsel appearing for the second respondent and perused the records.

6. The first contention raised by the second respondent before



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the Labour Court is that the cash bag was not checked and the passengers were not examined. There are several cases where it has been held that the cash bag need not be examined for the reason, if any person is entitled to misappropriation, he will not keep the money in the cash bag, he will keep the money in his pocket. Therefore, checking the case bag will not furnish necessary evidence to prove the case.

7. The second contention raised is that the passengers were not examined by the Management. According to the Management, there are 12 passengers and four passengers have travelled and the second respondent has received Rs.14/- from the said four passengers, but the second respondent did not issue any tickets. Likewise, for another passenger, the second respondent has received money but has not issued the tickets. The third allegation is that the second respondent has not issued any tickets and has not received any fare from the passengers. As far the third charge is concerned, it cannot be considered as misappropriation, but deliration of duty. As far as the first and second charge is concerned, the petitioner Corporation has considered this as



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misappropriation. However, the Labour Court has held that it is an attempt for misappropriation. This Court is of the considered opinion that there cannot be any case as “attempt for misappropriation”, either it should be misappropriation or no misappropriation. Therefore, the reasoning stated by the Labour Court is not in accordance to law.

8. In the enquiry, all the tickets were marked, especially, the second respondent has not issued tickets to his passengers. After seeing the Checking Inspector, the second respondent has immediately removed the tickets and dropped it on the floor of the bus and thereafter, it has been handed over to the passengers. The contention of the second respondent is that he could not issue tickets to other four passengers because they were in a drunken mode. However, the learned Counsel appearing for the petitioner submitted that this plea was not taken before the Checking Inspector at all and it is after thought and it has been recorded by the Enquiry Officer also. Therefore, this Court is of the considered opinion that the Labour Court reasoning is not in accordance to law.



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9. The second respondent had joined the service in the year 1992 and was dismissed from service in the year 2004. It is seen that the petitioner has put in service for more than 12 years. Therefore, in order to grant equity relief to the petitioner, this Court is modifying the punishment as “Compulsory Retirement”, since the second respondent has put in 12 years of service. The second respondent is entitled to terminal and monetary benefits for the 12 years service. The petitioner Corporation is directed to implement this order within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. With the above said modification, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
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S.SRIMATHY, J

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To

The Presiding Officer,
Labour Court,
Madurai.

Order made in
W.P.(MD)No.2120 of 2016

08.11.2022