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W.P.No.10696 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09..06..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.10696 of 2013

P.Periasamy

..... Petitioner

-Versus-

1.The Management,
Tamil Nadu State Transport Corporation,
(Villupuram) Limited, Villupuram.

2.The Presiding Officer,
Labour Court, Cuddalore.

..... Respondents

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorari calling for the entire records relating to I.D.No.66 of 2003 on the file of the 2nd respondent herein and to quash the award dated 27.01.2011.

For Petitioner : Mr.R.Muralidharan

For Respondents : Mr.M.Aswin for R1

R2 – Labour Court

ORDER

The petitioner challenges the Award dated 27.01.2011 passed by the 2nd respondent refusing to order for reinstatement of the petitioner in service.



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2. The case of the petitioner is that he joined the services of the 1st respondent Corporation on 24.05.1985 as Conductor. He was dismissed from service on 27.07.2002. The charge against the petitioner was that he did not remit the collection amount to the tune of Rs.14,23,000/-. Further, on 21.01.2000, he had taken the trip sheet for Route No.310-G and 310-I. He had remitted the amount for Route No.310-G but, did not remit the amount collected for Route No.310-I. The 1st respondent corporation placed the petitioner under suspension from service on 24.02.2001. He was served with a charge memo on 21.06.2001 for which he submitted his explanation. Since his explanation to the said charge memo was not satisfactory, a domestic enquiry was instituted.

3. According to the respondent corporation, the domestic enquiry was conducted properly and a report was submitted and the petitioner also availed opportunity in the domestic enquiry. The enquiry officer upon completion of enquiry, submitted his report, finding the charges against the petitioner were proved. On the basis of such report, second show cause notice was issued on 04.07.2002 and the explanation to it was also found not satisfactory. Consequently, the petitioner was dismissed from service on 27.07.2002.



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4. Before the Labour Court, the petitioner examined himself and marked only one document. The 1st respondent did not examine any one but, marked Ex.M.1 to M.74. The labour court found that in the domestic enquiry, the person in-charge of the audit section had stated that the petitioner might have used the tickets mentioned in the charges. But, according to the petitioner, this is vague and this is not attributable to petitioner.

5. The labour court also took into consideration the factum that the signatures of as many as 8 Officers had been forged. Under Ex.M.15, it found that the petitioner did not remit the ticket collection for Route No.310-I and had taken away the ticket book with an intention to misappropriate the amount. The labour court also found that the domestic enquiry was conducted fairly and properly and that there were materials to show that the petitioner had committed the acts of misconduct and was involved in misappropriation of the amounts due to the respondent corporation. Having come to such conclusion, the labour court had dismissed the Industrial Dispute. Challenging the same, the present writ petition has been filed by the petitioner/employee.

6. Mr.R.Muralidharan, learned counsel for the petitioner would invite my attention to the charge memorandum and to the dismissal order and would state that both had been passed by one and the same person by name Vasudevan.



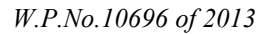
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Therefore, his submission is that the authority who issues the charge memo should not be the authority who passes the order and that it vitiates the enquiry.

This, he, would point out from Exs.M.54 & M.74. He is correct in the position that Exs.M.54 & 74 had been passed by the same authority. However, the submission made by the learned counsel for the petitioner that the authority who issued the charge memorandum should not be the authority to pass the order of dismissal is not acceptable to me. The enquiry officer who conducted the enquiry is a different person and he had conducted the enquiry independently and submitted a report holding that the charges were proved.

7. Mr.R.Muralidharan, learned counsel relying upon the judgements in **Correspondent, Anaikar Oriental (Arabic) Higher Secondary School v. Haroon [AIR 2017 SC 926]**; **M.Jamalutheen v. The Director of School Education, Tamil Nadu [2007 (1) LW 22 (Short Notes)]**; and **Rattan Lal Sharma v. Managing Committee, Dr.Hari Ram (Co-education) Higher Secondary School [AIR 1993 SC 2155]** would contend that it would be violation of principles of natural justice.

8. I have gone through the judgement in Correspondent, **Anaikar Oriental (Arabic) Higher Secondary School v. Haroon [AIR 2017 SC 926]**. In that judgement a Head Master was placed under suspension. The



Therefore, the court came to a conclusion that where all the three officers are one and the same it would be the violation of principles of natural justice. In the present case, the enquiry was not conducted by Vasudevan, but by a different officer. Therefore, it cannot be said that Vasudevan had actively participated in the enquiry as against the petitioner in order to infer violation of principles of natural justice.

10. Mr.R.Muralidharan thereafter requested me to go through the evidence in order to find out contradictions in them and in order to substantiate



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his case that the enquiry officer ought not to have found the petitioner guilty of

the charges. I am afraid sitting under Article 226 of the Constitution of India, I do not have the power to re-appreciate the evidence. I am only concerned whether the impugned award passed by the 2nd respondent is sustainable in law or whether there is any perversity or illegality in the same. I do not find the same in the present situation. On the contrary, the principles of law have been correctly appreciated by the labour court and the enquiry report has also been found to be in compliance with the principles of natural justice.

11. Having come to such conclusion, if any benefit on reduction of the punishment is given to the petitioner, it would amount to giving a premium for acts of misappropriation committed by the petitioner to the tune of Rs.14.23 lakhs. I conclude the petitioner is not entitled to any sympathy. Thus, principles have been properly applied in the present case. I do not find any illegality or irregularity in the order of the labour court.

In the result, the writ petition is dismissed. The award dated 27.01.2011 passed in I.D.No.66 of 2003 by the 2nd respondent stands confirmed. No costs.

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Index : yes / no
Neutral Citation : yes / no
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V.LAKSHMINARAYANAN, J.

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