



WEB COPY



W.P.No.23528 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.07.2023

PRONOUNCED ON : 24.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.23528 of 2009

The General Manager,

Tamil Nadu State Transport Corporation,

(Villupuram Division-III) Ltd.,

Kancheepuram Region,

Kancheepuram-631 501.

: Petitioner

-VS-

1.The Presiding Officer,
III Additional Labour Court,
Chennai-600 104.

2.Lakshmipathi

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records made in I.D.No.615 of 2004 dated 24.04.2009 on the file of the first respondent and quash the same.



W.P.No.23528 of 2009

For Petitioner : Mr.M.Aswin

For R1 : Court

For R2 : Mr.S.Ravi

ORDER

The State Transport Corporation is the petitioner herein. Challenging the award passed by the first respondent herein in I.D.No.615 of 2004, dated 24.04.2009, the petitioner has filed the above writ petition.

2. The brief facts leading to filing of the above writ petition are as under:

(a) The second respondent herein had joined in the petitioner corporation as Conductor on 01.04.1992. While the respondent workman was on duty on 09.05.2003 on the route Pondicherry-Chennai, the vehicle was checked by the checking squad at Vembakkam cross-road, and found that the second respondent workman had committed misconduct of misappropriation of money by way of collecting the fare from a passenger, but failed to issue the relevant ticket of Rs.47.50 to the concerned passenger who is



W.P.No.23528 of 2009

travelling from Pondicherry to Chennai. While checking the cash bag, it was also further noticed a shortage of Rs.61.50;

(b) Consequent to the aforesaid misconduct of misappropriation of money, based on the checking officials, the workman was placed under suspension on 08.05.2003. A charge memo dated 08.05.2003 was also issued to the workman, for which, he submitted his explanations on 17.05.2003. However, having not satisfied with the same, ordered for the conduct of domestic enquiry;

(c) The domestic enquiry conducted by the Enquiry Officer and provided ample opportunities to the workman to defend his interests in this case. Based on the available documents and evidences, the Enquiry Officer found that the charges framed against the workman were held to be proved, and accordingly, submitted his enquiry report to the Management on 21.08.2003;

(d) After receipt of the enquiry report, the Management enclosing a copy of the enquiry report issued second show cause notice to the respondent workman on 22.10.2003, for which also, the



W.P.No.23528 of 2009

WEB COPY

workman submitted his explanation dated 16.11.2003. However, not satisfied with explanations, based the past conducts, the Management passed the impugned order of dismissal from service on 04.12.2003;

(e) As against the order of dismissal from service, the workman had raised an Industrial Dispute before the Labour Court, in which, the Labour Court has passed an award for reinstatement with back wages, with continuity of service and all other attendant benefits.

3. The learned counsel for the petitioner Management would contend that as per the Standing Orders of the Corporation, the act of the second respondent workman amounts serious misconducts. The second respondent workman was punished for more than 10 times during his past service, out of which, three times, he was dismissed from service on 21.06.1976, 02.01.1984 and 20.03.1993. Firstly, the workman was dismissed from service on 21.06.1976 for the same set of charges of misappropriation. Subsequently, on a mercy petition submitted by the workman, he was reinstated in service as a fresh entrant under Section 18(1) settlement.

3.1. Again as second time, the workman was dismissed from service



W.P.No.23528 of 2009

on 02.01.1984 for having committed identical ticket irregularities while on duty. Subsequently, on a mercy petition, the workman was reinstated in service again as a fresh entrant under Section 18(1) settlement.

3.2. On bifurcation, based on his option, the respondent workman was permanently transferred to the petitioner corporation on 01.04.1992. However, again as third time, the workman was dismissed from service on 20.03.1993 for having committed similar ticket irregularities.

3.3. During his past service, for the other similar misconducts, four times he was warned, once postponement of increment for three months was ordered, and once pay reduction was ordered. However, the second respondent has not changed his attitude and continued to commit the same amount of misconduct and misappropriations and hence, would contend that the reinstatement with continuity of service with 50% backwages and all other attending benefits as awarded is unsustainable in law.

4. The learned counsel for the second respondent workman made submissions in support of the award passed by the Tribunal and drew my



W.P.No.23528 of 2009

attention to the fact that the finding of the Labour Court that non-examination of concerned passenger before the domestic enquiry vitiated the enquiry proceedings and the past conduct of grievance cannot be taken into consideration and put against him.

5(a). After hearing the rival submissions and after perusing the back records, I find that by an order dated 18.11.2009, this Court directed the petitioner Corporation to deposit the award amount to the credit of I.D.No.615 of 2004 within the stipulated time and thereafter, it appears that miscellaneous application in M.P.No.1 of 2010 was filed for extension of time and the same was also allowed on 30.09.2011.

5(b). The second respondent workman has already attained the age of superannuation and is now 70 years old. The question of reinstatement does not arise. Whether the order passed by the Labour Court for reinstatement with 50% of backwages is justifiable.

6. The learned counsel for the petitioner also relied upon the Judgment of the Hon'ble Division Bench of this Court in ***W.A.No.3570 of***



W.P.No.23528 of 2009

2003, dated 02.02.2007 in **Management of Institute of Road Transport**

Technology, Erode Vs. S.Arumugam and Others, wherein, this Court has

held that '*the High Court under Article 226 of the Constitution of India can be quashed the award of the Labour Court when the same is vitiated by apparent errors of law and misreading of the facts*'. Further, he also relied upon the decision of the Division Bench of this Court in **Management of M.F.L. Vs. Presiding Officer, I Additional Labour Court, Madras and Others (1990-I-LLJ-298)**, wherein, this Court has held that '*this is an erroneous thinking about the powers of this Court in writ jurisdiction. What the Labour Court should do and when there is an omission on the part of it to do that, this Court, in exercise of the powers under Article 226 of the Constitution of India, can certainly do*'. Further, he relied upon the Judgment of the Hon'ble Supreme Court in **North West Karnataka Road Transport Corporation Vs. H.H.Pujar** reported in (2008) 12 SCC 698, wherein, the Hon'ble Supreme Court has observed that '*the reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the*



W.P.No.23528 of 2009

passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid'.

7(a). In the instant case, the specific charge against the second respondent herein is that after collecting fare from the passenger, he refused to issue ticket for Rs.47.50/- and also on checking the cash book, it is further noticed that Rs.61.50/- (it was in the year 2003) was shortage. Domestic internal enquiry was held and there is no allegation of violation of procedure therefor. It is seen that on behalf of the Management, one Srinivasan and Kalyanasundaram were examined. The Checking Inspector was examined as M.W.1 and the Superintendent in the Office was examined as M.W.2 and they clearly supported the case of the Management.

7(b). From the award, it appears that the finding of the Labour Court to the effect that the concerned passenger was not examined before the domestic enquiry and the non-examination of the concerned passenger before the domestic enquiry vitiated the enquiry proceedings as stated



W.P.No.23528 of 2009

supra. In the decisions stated in ***H.H.Pujar's case***, the Hon'ble Supreme Court has held that these are all instructions of prudence and not rules that bind or vitiate in the violation and hence, the finding rendered by the Labour Court is held to be unsustainable in law. Accordingly, the finding of the Labour Court stands vacated by following the Judgment of this Court in ***Management of Institute of Road Transport Technology, Erode Vs. S.Arumugam and Others*** cited *supra*.

8(a). It is noticed from the affidavit filed by the Management that the second respondent workman was punished for more than ten times during his past service and out of three times, he was dismissed from service on 21.06.1976, 02.01.1984 and 20.03.1983. It is also to be stated that he has committed the identical ticket irregularities while on duty. On mercy petition, he was reinstated. Besides during his past service, for the other similar misconducts, four times, he was warned and one time postponement of increment for three months was ordered and one time pay reduction was ordered. Despite such past records, the second respondent workman has not changed his attitude and continued to commit the same amount of misconduct and misappropriations.



W.P.No.23528 of 2009

WEB COPY

8(b). Hence, I find that the order of reinstatement with continuity of service is an erroneous for such a person of such conduct. Hence, the order of reinstatement with continuity of service as ordered by the Labour Court is hereby set aside.

8(c). It is stated by the learned counsel for the respondent workman that he has already attained the age of retirement even before filing the writ petition.

9. The decision of the Hon'ble Division Bench of this Court in ***W.A.No.2041 of 2018, dated 16.03.2022 [P.Palanivel 'C' Coy Vs. The Commandant and another]***, wherein, the Division Bench has held that “*eventhough the appellant would contend that for a trivial misconduct, he has been punished and that it cannot be considered as a past record, we are of the view that past record is a past record whether the charges are grave or trivial in nature*”. In the decision of this Court reported in ***2017 (4) CTC 507 [Central Industrial Security Force Vs. Abrar Ali]***, observed that “*In order to avoid any controversy, we direct that the Respondent shall be*



W.P.No.23528 of 2009

entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension. He will not be entitled for payment of salary and allowances for that period”.

10. Considering the fact that the respondent workman has already crossed the age of retirement and also he has dismissed from service on three occasions as stated supra, I am inclined to modify the order passed by the Labour Court as under:

(i) The order of reinstatement with continuity of service with 50% backwages is hereby set aside and modified;

(ii) The second respondent is entitled for notional continuity of service till the date of completion of minimum service required to make him eligible for pension and he will not be entitled for payment of salary and allowances for that period.

11. With the above observations, the writ petition is partly allowed to



W.P.No.23528 of 2009

the extent indicated above. No costs.

WEB COPY

24.11.2023

Index: Yes / No
Internet: Yes / No
NCC : Yes/No
sjj

To

The Presiding Officer,
III Additional Labour Court,
Chennai-600 104.

RMT. TEEKAA RAMAN, J.

sjj



WEB COPY



W.P.No.23528 of 2009

**Pre-Delivery Order made in
W.P.No.23528 of 2009**

24.11.2023