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W.P.No.4411 of 2004

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.4411 of 2004

The Management,

MGR Transport corporation,

Now renamed as Tamil nadu State Transport Corporation,

(Villupuram Division III) Limited,

Kancheepuram.

: Petitioner

-VS-

1.Lakshmipathy

2.The Presiding Officer,
II Additional Labour Court,
Chennai.

: 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.813 of 1993 of 2004 dated 18.09.2002 on the file of the II Additional Labour Court, Chennai, the second respondent herein and quash the same.



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For Petitioner : Mr.M.Aswin

For R1 : Mr.S.Ravi

For R2 : Court

ORDER

The Transport Corporation is the petitioner herein. The Management has filed the above writ petition for quashment of the award passed by the second respondent in I.D.No.813 of 1993, dated 18.09.2002, wherein, the Labour Court has passed an award in favour of the workman for reinstatement with continuity of service and full backwages.

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

(a) While the first respondent was performing duty as Conductor in route No.123 B bearing Registration No.TN TCB 3349 on 03.05.1992, he had failed to issue five tickets for Rs.1.80/- each, after having collected from the passengers. Further, he has also kept deficit cash balance of Rs.79/90 in the collection amount in the cash bag at the time of checking. Hence, he committed a grave misconduct



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of misappropriation of the corporations money;

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(b) According to him, while he was on duty on 03.05.1992 collected fare from five passengers, but he did not issue tickets to them. There was shortage of Rs.79/90 in the cash bag. Hence, a charge memo was issued to him on 05.05.1992 and he submitted his explanation not satisfied with the principles of natural justice. The enquiry officer submitted his report;

(c) Based on the enquiry report, the first respondent was dismissed from service on 17.03.1993.

3. Before the Labour Court, the Management has filed counter stating that while the first respondent was on duty on 03.05.1992 in route No.123 B bearing Registration No.TN TCB 3349 as Conductor, he collected fare from five passengers and did not issue tickets to them. Further, there was shortage of Rs.79/90 in the collection amount in his cash bag.

4. Before the Labour Court, on behalf of the Management, one person



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was examined, namely, Thiyaigaiya and marked Ex.M.W.1 to Ex.M.W.7. The main charge against the second respondent is that for five passengers, he has not issued tickets for Rs.1.80/- each, despite receiving the fare and there is a shortage, namely, instead of 1438.80/-, sum of Rs.1358.90 alone was available in the cash bag. Statement of the passengers were marked as Ex.M.W.3 and Ex.M.W.4 and the passengers were not examined.

5. The learned counsel for the petitioner would rely upon the Judgment of the Hon'ble Division Bench of this Court in ***W.A.No.3570 of 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 would rely 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*



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*to do that, this Court, in exercise of the powers under Article 226 of the Constitution of India, can certainly do'. Further, he would also rely 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 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'.*

6. In the instant case, the Labour Court has categorically rendered a finding that the Checking Inspector and the Superintendent on the relevant date was not examined by the management, though the passengers, who gave the statement was not examined. However, non-examination of the Checking Inspector and the Superintendent, the Labour Court has criticized



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the Management and held against the Management and ordered the award. I find that non-examination of the Checking Inspector and the Superintendent is fatal to the plea raised by the Management. The Management may or may not subject to the availability of the passengers, who had given the statement be in a position to examine them in the internal enquiry. However, during the industrial dispute enquiry before the Labour Court, the Checking Inspector ought to have examined as a witness to say and deposed regarding the truthfulness of the alleged statement said to have been given by the passengers and hence, I do not find any error in the award passed by the Labour Court.

7. Accordingly, the Writ Petition stands dismissed. No costs.

24.11.2023

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

To

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



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RMT. TEEKAA RAMAN, J.

sj1

**Pre-Delivery Order made in
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