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W.P. No.32643 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Writ Petition No.32643 of 2013

The General Manager
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Kancheepuram Region
Kancheepuram.

... Petitioner

VS.

1.The Special Deputy Commissioner of Labour
DMS Compound, Anna Salai
Chennai.

2.K.Raghulan
S/o M.P.Krishnan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to
pass a Writ of Certiorari, calling for the records of the 1st respondent in
A.P.No.108 of 2012 dated 27.12.2012 and quash the same as illegal.

For petitioner : Mr.M.Aswin, Standing Counsel

For respondents : Mr.V.Ajoy Khose for R2
for R1 – Court



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ORDER

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Challenging the rejection of approval sought, the petitioner has filed the Writ Petition.

2.The writ petitioner is the Management of Tamil Nadu State Transport Corporation (Villupuram) Ltd., Kancheepuram Region. The 2nd respondent was employed as a Conductor under the petitioner Corporation herein. While so, the 2nd respondent was issued with the charge sheet dated 26.02.2010 for the misconduct of misappropriation in fare collection and non-issuance of tickets, while he was working as Conductor on 18.02.2010, when the bus was going from Tambaram to Kancheepuram.

3.The enquiry officer came to the conclusion that the charges were proved and imposed the punishment of dismissal from service on 21.07.2011, along with one month salary to the 2nd respondent.

4.The 1st respondent/Labour Court on the other hand, came to the conclusion that no prima facie case was made out to prove the charges and therefore dismissed the approval petition filed by the writ



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petitioner/Corporation.

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5.The learned counsel for the petitioner Corporation submitted that the evidence of the checking inspector was sufficient to show that the 2nd respondent had, in fact, received the fare and had failed to issue tickets, thereby allowed the passengers to alight from the bus and that he had failed to issue tickets to one passenger, though the bus had travelled more than 1 km., after the passengers had boarded the bus. The learned counsel further submit that the *prima facie* of the case will not be required for an existence of clear proof of misconduct. The usage of '*prima facie of the case*' in **Lala Ram's** case reported in **AR 1978 SC 1004** would show that the power of approval should be limited to an extent of seeing that there is existence of the *prima facie* of the case to see that there is no victimization of the employee. In support of his contention, he relied upon the following Judgments :-

(i) **State of Haryana and another Vs. Rattan Singh** reported in **(1977) 2 Supreme Court Cases 491** and

(ii) Unreported Judgment of this Court in W.P.No.22767 of 2004 dated 31.10.2012.



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6.Per contra, the learned counsel for the 2nd respondent/Conductor would submit that when no independent witnesses like passengers, who travelled in the bus were examined in the enquiry proceedings, the entire proceedings of the enquiry officer are vitiated, that too, when the petitioner Corporation not even examined the driver of the bus, to arrive at a conclusion. Explanation given by the 2nd respondent had not been considered by the enquiry officer and when there was absolutely no cross-examination by the management, the case of the 2nd respondent as set out in his explanation would stand unrebutted. It is a settled proposition on the procedure to be adopted during the course of inquiry, for the purpose of proving any documentary evidence. When a crucial piece of document is produced during the course of such inquiry, the contents thereof requires to be proved by examination of a proper and relevant witnesses.

7.Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent and also perused the materials.

8.It is trite law that a judicial review of this Court, over a decision rendered by the Labour Court, which was asked to adjudicate upon the



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validity of the departmental proceedings is very limited. Until and unless the Labour Court has committed a gross error which is manifest and apparent, this Court cannot act as an appellate authority and re-appreciate the evidence. In this case, the Labour Court has given factual findings based upon the materials available on record. There is nothing to demonstrate that the findings rendered by the Labour Court are perverse or based upon no evidence.

9.The Hon'ble Supreme Court, in the case of ***Roop Singh Negi Vs. Punjab National Bank and others*** reported in ***2009 (2) SCC 570***, has held that the contents of the documents produced before an Inquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the inquiry proceedings itself will stand vitiated. The relevant portion of the judgment reads as follows:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Inquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The inquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported



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evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Inquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Inquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Inquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."



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10.The aforesaid extract is self-explanatory. During the course of inquiry, apart from the Checking Inspector, no other witness was orally examined. The Checking Inspector of the petitioner Corporation cannot be a proper or relevant witness, to speak about the incident which took place on 18.02.2010. If that be so, the findings of the Inquiry Officer, on the overall incident would stand vitiated and consequently, all other proceedings would be nullified. Thus, the Labour Court has rightly rejected the approval petition filed by the petitioner Corporation, on the ground that there is no evidences and witnesses to substantiate the case, as against the 2nd respondent, which does not warrant interference at the hands of this Court and the writ petition fails.

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

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Index :Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

Neutral citation:Yes/No

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J.NISHA BANU, J.

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To
The Special Deputy Commissioner of Labour
DMS Compound, Anna Salai
Chennai.

ORDER MADE IN
W.P. No.32643 of 2013

17.04.2023