



W.P.No.1299 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.1299 of 2022

and

WMP.Nos.1412 & 4973 of 2022

The Management,
Metropolitan Transport Corporation,
Pallavan Illam, Anna Salai,
Chennai – 600 002.

...Petitioner

Vs.

A.Elumalai

...Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the order passed in I.D.No.105 of 2018 dated 27.11.2019 on the file of the Ist Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr.K.Moorthy

For Respondent : Mr.S.T.Varadarajulu



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ORDER

This Writ petition has been filed seeking quashment of the award dated 27.11.2019 passed in I.D.No.105 of 2018 on the file of the 1st Additional Labour Court, Chennai.

2. The case of the petitioner is that, the respondent was appointed as Conductor in the petitioner corporation in the year 2011. On 08.01.2015, when the respondent was on duty, he committed certain misappropriation while issuing ticket, and thereby, a charge memo was issued on 22.01.2015, pursuant to which domestic enquiry was conducted in which opportunity was afforded to the respondent and, thereafter, the charges having held to be proved, the respondent was terminated from service on 02.11.2016. Aggrieved by the said termination, the respondent raised an industrial dispute in I.D.No.105 of 2018 before the 1st Additional Labour Court, Chennai, in which, the present impugned award dated 27.11.2019 came to be passed. Challenging the same, the petitioner corporation has come up with this Writ petition.



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3. Learned counsel for the petitioner submitted that, on 08.01.2015, when the respondent was on duty in Bus Route No.S536/B/F.S./P.M, he collected ticket fare of Rs.22 from the passenger and issued old tickets and apart from that, there was less of Rs.121/- in his collection money bag, which is a clear misconduct as per the Certified Standing Orders of the petitioner corporation. Further, the respondent suffered twelve punishments in the past for similar misconduct, while so, the respondent once again repeated the same misconduct, and after taking into consideration all the above said facts, the petitioner corporation terminated the respondent from service, after conducting proper enquiry, since the respondent is a habitual offender and is in the habit of misappropriation and no leniency can be shown towards him. However, the Lower Court, without proper adjudication, passed the present impugned award, setting aside the order of dismissal passed by the petitioner and further modifying the punishment of dismissal into postponement of annual increment for two years with cumulative effect and directed the petitioner corporation to reinstate the respondent with continuity of service and along with 50% back wages, which is *per se* illegal. Hence, he prayed for appropriate orders.



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4. Learned counsel appearing for the 1st respondent submitted that, the

respondent joined the service of the petitioner corporation in the year 2009 and was subsequently made permanent in the year 2011. Further, it is pertinent to note that, earlier the procedure to issue tickets is manual, and subsequently, the same was updated and tickets were issued using ticket vending machine, for which, no training was provided to the 1st respondent and was forced to issue tickets using the updated ticket vending machine, due to which, the alleged error was caused and the 1st respondent mistakenly pressed No.7 instead of No.1 and a bill came for seven tickets and he kept the said wrong tickets with him without issuing them and gave another ticket and was wrongly accused for issuance of sold tickets and when the same was demonstrated before the Labour Court, the Labour Court, after considering all the above said facts, passed the present award by exercising the power conferred under Section 11A of the ID Act and modified the punishment of dismissal into postponement of annual increment for two years with cumulative effect, since, for the above said alleged misconduct, imposing the maximum punishment of dismissal is too harsh. Further, though the petitioner claim that the respondent suffered 12 punishments for similar misconduct, however, among the said 12 punishments, 7 were for



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absence without prior permission, that too due to unavoidable situations and not for similar misconduct. Hence, he prayed for dismissal of this Writ petition.

5. Heard learned counsel on either side and perused the material documents placed on record.

6. The major allegation made as against the 1st respondent/workmen is that, he issued used tickets for a passenger and keeping Rs.121/- excess cash, for which, the disciplinary proceedings came to be initiated as against the 1st respondent, and the same ended in dismissal.

7. Further, the claim of the 1st respondent is that he realised his mistake in the operation of the ticket vending machine and his act was demonstrated before the Labour Court which had accepted the said submission. However, no contra evidence has been placed before the Labour Court by the petitioner to show that it was a calculated act on the part of the respondent. Further, it is fairly submitted on behalf of the 1st respondent before this Court that, he is ready to forego the 17B wages and back wages.



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8. Further, it is to be pointed out that the punishment should be commensurate with the delinquency committed. Even assuming that, the alleged misconduct is held to be proved, however, imposing a punishment of dismissal from service for the said misconduct is highly disproportionate and invoking Section 11-A of the ID Act, the Labour Court had modified with the punishment, which cannot be said to be wrongful or erroneous and beyond the jurisdiction of the Labour Court.

9. Accordingly, this Writ petition stands disposed of by modifying the order passed by the Labour Court by issuing the following directions :-

(i) The petitioner management is directed to reinstate the 1st respondent within a period of two weeks from the date of receipt of a copy of this order.

(ii) The 1st respondent is not entitled for any back wages including 17B wages, however, he is entitled for continuity of service and other attendant benefits.

(iii) No costs. Consequently, the connected miscellaneous petitions are closed.

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NCC : Yes/ No

Speaking Order : Yes/ No

Index : Yes/ No

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