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WP.No.9351 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. No.9351 of 2013

N.Sivanchyal

....

Petitioner

Vs

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

2. The Presiding Officer,
Labour Court,
Cuddalore.

....

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the entire records relating to I.D.No.32 of 1998 on the file of the 2nd respondent herein dated 08.02.2010 and quash the same.

For Petitioner	:	Mr.R.Muralidharan
For R1	:	Mr.M.Ashwin
		Standing Counsel
For R2	:	Court

ORDER

This writ petition has been filed challenging the order dated 08.02.2010 passed in I.D.No.32 of 1998 by the second respondent,



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thereby dismissing the Industrial Dispute raised by the petitioner as against the order of removal from service.

2. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the second respondent and perused the materials available on record.

3. The petitioner was employed as a Conductor in the first respondent Corporation from 10.05.1985. While he was in service, he was served with a charge memo alleging that the petitioner corrected the ticket numbers in the invoices and thus committed misappropriation of the amount of the first respondent Corporation. The alleged corrections were made in respect of Route No.D11 on 05.03.1994. Again on 07.03.1994 in respect of Route No.17, on 10.03.1994 in respect of Route No.11 and finally on 12.03.1994 in respect of Route No.11, corrections were made. On the strength of the charge memo, an enquiry was conducted and the petitioner did not appear before the Enquiry Officer. Therefore, an ex-parte enquiry was conducted and all the charges were proved against the petitioner. On the strength of the enquiry report, the petitioner was removed from service by an order dated 15.07.1994.



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Aggrieved by the same, the petitioner raised Industrial Dispute in I.D.No.32 of 1998 and the same was also dismissed by the second respondent.

4. The learned counsel appearing for the petitioner would submit that as per the charge memo, the petitioner had misappropriated a sum of Rs.95.50/-. Though the petitioner sought for certain copies of six documents from the second respondent, those were not provided to the petitioner. Even then the petitioner was not given sufficient opportunity to contest the case in the domestic enquiry. In fact, MW1 categorically admitted that the alleged corrections can be proved only after examination of the passengers, who purchased the tickets.

5. He also cited the Judgment of the Hon'ble Supreme Court of India reported in *AIR 2017 Supreme Court Page 57* in the case of *Jursingh Govind Vanjari Vs. Divisional Controller Maharastra States Road Transport Corporation*, in which the Hon'ble Supreme Court of India held that the principles of natural justice have not been observed by the Management. The alleged passengers have not been examined and an opportunity of cross examining them is not available to the workman.



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The one and the same authority had issued charge sheet, conducted enquiry and suggested punishment. Therefore, serious prejudice is caused to the workman. Accordingly, bias enquiry was conducted. Instead of examining the witnesses, the enquiry officer considered their statements recorded on the spot and concluded that the charge of misconduct have been proved as against the workman. However, in the case on hand, no statement have been recorded from the passengers who purchased the tickets.

6. He further submitted that there was no provision in respect of limitation for initiating proceedings before the Labour Court only under Section 2A in Sub-Section (3) of the Industrial Dispute Act is very clear that there was no limitation for raising an Industrial Dispute before the Labour Court. Only thereafter by way of amendment there is limitation.

7. The learned counsel appearing for the first respondent submitted that though the first respondent raised the ground of delay of 13 ½ years, the Labour Court did not take that ground into consideration while dismissing the Industrial Dispute raised by the petitioner on the



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ground that he raised industrial dispute after 3 ½ years from the date of his removal from service. He also pointed out that the quantum may be marked, which is an act of misappropriation. The way bills, which were corrected by the petitioner and the same was compared with the invoice. Therefore, no need to examine any passengers, since the Superintendent of the auditing only found corrections made in the way bills and as such, non cross examination of passengers is not fatal to the case of the department. Therefore, the second respondent rightly dismissed the industrial dispute raised by the petitioner and it does not require any interference by this Court.

8. The charge against the petitioner is that the petitioner was employed as Conductor and he submitted the way bills. During auditing by the Superintendent, it was found that the way bills dated 05.03.1994, 07.03.1994, 10.03.1994 and 12.03.1994 and Sl.No.28950 was corrected as 28959 and misappropriated Rs.8/-; Sl.No.083913 was corrected as 083918 and misappropriated Rs.13.50/-; Sl.No.080976 was corrected as 080986 and misappropriated Rs.15/- ; Sl.No.066170 was corrected as 066179 and misappropriated Rs.22.50/- ; Sl.No.030480 was corrected as 030489 and misappropriated Rs.9/- and Sl.No.076448 was corrected as



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076458 and misappropriated Rs.17.50/-, totally a sum of Rs.99.50/- was misappropriated by the petitioner. Though the petitioner called upon for enquiry and in order to attend enquiry, he was not provided with any documents. Therefore, the petitioner did not attend the enquiry and an ex-parte enquiry was conducted by the Enquiry Officer and submitted his report. The alleged way bills are marked as Exs.M1 to M4. Since it was found during the auditing, no passengers were examined by the Management to show that those tickets were sold out to the passengers and failed to account the said amount to the first respondent. Further, when the auditing was conducted by the first respondent was also not explained by petitioner.

9. In this regard, the learned counsel appearing for the petitioner relied upon the Judgment reported in *AIR 2017 Supreme Court Page 57* in the case of *Jursingh Govind Vanjari Vs. Divisional Controller Maharashtra States Road Transport Corporation*, in which the Hon'ble Supreme Court of India held that the principles of natural justice have not been observed by the enquiry officer. The alleged passengers have not been examined and an opportunity of cross examining them is not available to the workman. The one and the same



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authority has issued charge sheet, conducted enquiry and suggested punishment. Therefore, serious prejudice is caused to the workman.

According to him, the enquiry conducted was bias. Instead of examining the witnesses, the enquiry officer considered their statements recorded on the spot and concluded the charge of misconduct have been proved against the workman.

10. In the case on hand, the petitioner corrected the way bills after selling out the tickets and thereby misappropriated a sum of Rs.95.50/. No passenger was examined by the Management to show that after selling out the tickets it was not accounted by the petitioner and thereby he manipulated the way bills by correcting number of the tickets. Thus, the Management failed to prove his charges. The order of termination was not justified by the first respondent. Therefore, the order of termination is not sustainable and it is liable to be quashed. However, the petitioner had attained the age of superannuation and as such reinstatement does not arise. However, the petitioner is entitled for compensation of 50% of back wages till the age of his superannuation from the date of removal from his service and all other terminal benefits and all other attendant benefits and the first respondent is directed to



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disburse the same within a period of twelve weeks from the date of receipt of a copy of this order.

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11. In the result, this Writ Petition stands allowed. There shall be no order as to costs.

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Index:Yes/No
Internet:Yes/No

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