IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.12701 of 2019 &
W.M.P. Nos.23315, 12934, 12932 of 2019 & 8924 of 2022

The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Represented by its General Manager
Cuddalore Region,
Cuddalore District 607 002 ... Petitioner

Vs.

1. The Joint Commissioner of Labour
(Conciliation),
D.M.S. Compound
Chennai 600 006.

2. D. Krishnamurthy ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the orders dated 27.03.2017 passed by the 1st respondent in A.P. No.256 of 2014 and quash the same.

For Petitioner	:	Mr.M. Aswin
For R1	:	Mr.D. Gopal Government Advocate

For R2 : Mr.A.V. Arun
for Mr.M.A.Aruneshe

ORDER

The Writ Petitioner is the Tamil Nadu State Transport Corporation (Villupuram) Limited represented by its General Manager. They have challenged the order dated 27.03.2017 passed by the Special Joint Commissioner of Labour, Chennai, in A.P. No.256/2014.

2. The 2nd respondent, D. Krishnamurthy, joined the petitioner Corporation as a conductor attached to Chidambaram bus depot on 28.11.1992 and was confirmed in service on 01.08.1993. On 15.05.2014 when he was on Route No.NT11/B, Special Bus Service, the checking squad checked the conductor and the passengers in a place called Pavithram and it was found that though the 2nd respondent had collected Rs.7 form 12 passengers he had not issued the tickets to them and also had Rs.6/- excess in his conductor bag for which he was placed under suspension and subsequently issued a charge memo dated 16.06.2014. A domestic enquiry was ordered thereafter in which sufficient opportunity

was given to the 2nd respondent to explain his position. On completion of the enquiry, the Enquiry Officer held that all the charges as proved and submitted his report on 28.07.2014 based on which the second show cause was issued on 28.08.2014. Keeping in mind his past record and the present findings in the Enquiry Report he was removed from service on 10.10.2014 and simultaneously the petitioner Corporation filed the Approval Petition under Section 33(2)(b) of the Industrial Disputes Act (hereinafter referred to as "the Act") before the 1st respondent. The 1st respondent on 27.03.2017 rejected the Approval Petition on the ground that (i) the domestic enquiry was vitiated and (ii) one full month's salary was not paid, thereby leading to the present petition.

3. Mr.M. Aswin, Learned Counsel for the petitioner would contend that the 2nd respondent had a dubious distinction of being punished for irregularities in sale of tickets, excess cash found in his bag, etc. since 1996. According to the counsel, the order of removal passed by the Disciplinary Authority was a speaking one with a proper reasoning. It was also contended that the domestic enquiry was conducted in a fair manner affording sufficient opportunity for the delinquent employee

(2nd respondent) to defend himself. His further contention is that the 1st respondent did not apply his mind in the facts of the case and on the contrary had mechanically arrived at a wrong conclusion of rejection of the approval petition on flimsy grounds.

4. Per contra Mr.A.V. Arun, learned counsel for the 2nd respondent contended that non-examination of necessary witnesses vitiated the domestic enquiry and therefore the 1st respondent was right in rejecting the approval petition. He further contended that the 1st respondent had rightly observed regarding the deficit in full month's salary paid to the 2nd respondent as mandated by the provisions of 33(2)(b) of the Act.

5. From the foregoing discussions it is clear that the Approval Petition was rejected based on the following grounds:

a) Non-examination of passengers as witnesses in the domestic enquiry.
b) short payment of one month's wages at the time of dismissal.

The 1st respondent contended that non examination of the passengers as well as the officials of the Management vitiated the whole process of enquiry. In my opinion an independent checking squad had detected the irregularities in issuing tickets as well as the excess cash in the conductor's bag. The conductor (2nd respondent) was afforded adequate opportunity to explain his position not only in the domestic enquiry but also much before, at the time of checking by the squad. The 2nd respondent had not attributed any ill motive on the checking squad personnel. Moreover his track record has blemishes and in many of the earlier occasions it was only either excess cash or deficiency in sale of tickets to the passengers and on all occasions he was punished. All these are mentioned in the final order. Though the 2nd respondent's counsel argued that his previous track record ought to have been mentioned in the charge memo issued to him, it is never a part of any charge sheet for the simple fact that a bias could be formed in the mind of the Enquiry Officer while deciding on the case in hand. However, it has been extensively elaborated in the final order justifying the punishment of removal from the service. As regards the one month's wages paid to the 2nd respondent, it is intriguing as to how the 1st respondent concluded that there was a shortage when the 2nd respondent himself did not raise any objections. It is also to be observed that the 1st respondent has not explained as to what was the deficit amount is and what was actually due to be paid. The conclusion of the 1st respondent regarding the one month wages is without any clarity and perverse.

6. In the result, the Writ Petition is allowed. The impugned order dated 27.03.2017 passed by the 1st respondent in A.P. No.256 of 2014 is set aside. No costs. Consequently connected Writ Miscellaneous Petitions are closed.

01.12.2023

bga
Index : yes/no
Speaking /Non speaking Order

To

The Joint Commissioner of Labour (Conciliation),
D.M.S. Compound
Chennai 600 006.

R.HEMALATHA, J.

bga

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