



WEB COPY



W.P.No.26964 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.26964 of 2014 and
MP.No.1 of 2014

The Management,
Tamilnadu State Transport Corporation
(Villupuram)Ltd.,
Kancheepuram Region,
Ponneri Karai, Bangalore National Highway,
Kancheepuram

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai-6
2.A.S.Baskaran(deceased)
3.Usharani
4.Rachel Priyanka
5.Christina Selva Rani
(R3 to R5 substituted as LR's of deceased 2nd respondent
vide order dated 10.07.2023 made in WMP.No.10692
of 2023 in WP.No.26964 of 2014)

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records of the first respondent made in AP.No.358 of 2011 dated 22.04.2013 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.



W.P.No.26964 of 2014

WEB COPY

For Petitioner : Mr.M.Ashwin

For Respondents

For R1 : No appearance

R2 : died (steps taken)

For R3 to 5 : Ms.Kirathiga
for M/s.Sudha Ramalingam

ORDER

This writ petition has been filed challenging the order passed by the first respondent in AP.No.358 of 2011 dated 22.04.2013, thereby dismissed the petition filed for approval of dismissal order passed against the second respondent herein.

2. The second respondent died and his legal heirs have been impleaded as respondents 3 to 5 herein. The deceased second respondent was working as Conductor in the petitioner's Corporation. He was assigned duty on 07.06.2010 in route No.200 P/C in bus bearing registration No.TN 21 N 1299. On surprise check by the Checking Inspector of the petitioner Corporation at about 5.38 p.m. near Varadhapalayam, he found that three passengers travelling from



W.P.No.26964 of 2014

Tirupathi to Tada were not issued tickets with denomination of Rs.46/- x 3 = 138. On verification of the hand bag, it was found that there was shortage of Rs.109/- also. It was grave misconduct and as such, the deceased second respondent was served with charge memo dated 21.06.2015. Without satisfying with the reply submitted by the deceased second respondent, enquiry was ordered and on the enquiry, all the charges framed against him were proved. On the strength of the enquiry report, he was dismissed from service after complying with the principles of natural justice by order dated 08.09.2011. The dismissal order was served with one month salary. Thereafter, the petitioner herein sought for approval of the dismissal order in AP.No.358 of 2011 as contemplated under Section 33(2)(b) of Industrial Disputes Act, 1947. However, it was dismissed on the ground that the passengers were not examined by the petitioner during the enquiry.

3. The learned counsel for the petitioner would submit that the first respondent ought to have found out whether *prima facie* made out or not while approving the order of dismissal. The *prima facie* of the case



W.P.No.26964 of 2014

means an element availability of the misconduct substantiated or grounded on some material evidences. The *prima facie* of the case will not require for an existence of clear proof of misconduct. The usage of the '*prima facie* of the case', 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. He further submitted that the Department made out a *prima facie* case by admission of the deceased second respondent himself and there is no requirement of any standard proof of evidences to substantiate the further claim.

4. Per contra, the learned counsel for respondents 3 to 5 submitted that the Department admittedly failed to examine any independent witness. They also failed to examine even the driver of the bus who drove the bus during the surprise inspection. That apart, they failed to examine any passenger to whom tickets were not issued after collecting money. Therefore, the first respondent rightly rejected the approval petition and it does not require any interference of this Court.



W.P.No.26964 of 2014

WEB COPY

5. Heard the learned counsel appearing on either side.

6. The deceased second respondent was served with charge memo dated 21.06.2010 that on surprise inspection conducted by the Checking Inspector of the petitioner Corporation, it was found that three passengers travelling from Tirupathi to Tada were not issued tickets with denomination of Rs.46/- x 3 = 138. That apart, in the handbag, it was found shortage of Rs.109/-. After receipt of reply on the show cause notice, enquiry was ordered. During the enquiry, the Checking Inspector was examined and *prima facie* made out by the Department and as such, the deceased second respondent was dismissed from service. In order to approve the same, the petitioner filed petition before the first respondent for approval of dismissal order in AP.No.358 of 2011. Admittedly, no passengers were examined and driver of the bus was also not examined by the petitioner during the enquiry conducted by the enquiry officer on the charge memo dated 21.06.2010.



W.P.No.26964 of 2014

WEB COPY

7. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of *State of Haryana Vs. Rattan Singh* reported in *(1977) 2 SCC 491*, wherein the Constitution Bench of the Hon'ble Supreme Court of India held that the Government servants in the departmental enquiry not bound by strict rules of Evidence Act, but by fair play and natural justice. Only total absence but not sufficiency of evidence before tribunal is ground for interference by court. In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be carefully in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. Therefore, the first respondent ought not to



W.P.No.26964 of 2014

have insisted that the passengers who had travelled without ticket to be examined before the enquiry officer.

8. Further held that the simple point was there some evidence or was there no evidence and not in the sense of the technical rules governing court proceedings but in a fair common sense way as men of understanding and worldly wisdom will accept. Therefore, mere non examination of independent witness does not render the finding of guilt and punishment invalid. The punishment imposed by the petitioner is limited and cannot be equated with that of the jurisdiction under Section 10 of Industrial Disputes Act. The scrutiny of the first respondent limited to ascertain whether *prima facie* case is made out for grant or non grant of approval of order of punishment. While doing so, the first respondent cannot substitute his own judgment but must only consider whether view taken by disciplinary authority is a possible view. The provision under Section 32 (2) (b) of the Act also delineates the extent of scrutiny to be done at this stage to ascertain whether *prima facie* case is made out for grant or non grant of approval to the order of punishment. Therefore, in



W.P.No.26964 of 2014

WEB COPY

view of non examination of passenger does not render the finding of guilt and punishment imposed by the disciplinary authority invalid.

9. In view of the above, the order passed by the first respondent is liable to be quashed. Accordingly, the order of the first respondent in AP.No.358 of 2011 dated 22.04.2013 is quashed and this writ petition is allowed. The petition under Section 33 (2) (b) of ID Act preferred by the petitioner is allowed. It is needless to say that the legal heirs of the deceased second respondent are at liberty to take recourse to appropriate remedy as may be available in law to question the said order of dismissal dated 08.09.2011 in the manner known to law. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

12.07.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
lok



WEB COPY



W.P.No.26964 of 2014



WEB COPY



W.P.No.26964 of 2014

G.K.ILANTHIRAIYAN, J.

lok

To

- 1.1.The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai-6
2. The Public Prosecutor,
High Court, Madras.

W.P.No.26964 of 2014

12.07.2023