



W.P.No.22688 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.22688 of 2019
and W.M.P.No.9411 of 2021

K. Meyyalagan

... Petitioner

Vs.

1.The General Manager,
Tamil Nadu State Transport Corporation Villupuram Ltd.,
Trichy Road,
Vazhudhareddy, Villupuram.

2.The General Manager,
Tamil Nadu State Transport Corporation Villupuram Ltd.,
Thiruvannamalai Region,
Thiruvannamalai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Principal Labour Court, Vellore in I.D.No.4 of 2017 dated 16.08.2018 and to quash the same and consequentially to direct the respondents to reinstate the petitioner in the service along with attendant benefits, back wages and continuity of service.



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For Petitioner : Mr.P. Paramasiva Doss

For Respondents : Mr.M. Aswin

ORDER

This Court has already disposed of this Writ Petition on 12.04.2023 and at the time of signing the order, I required some clarifications. Accordingly, the matter is listed today under the caption "for being mentioned" and after clarification, the following order is passed.

2. The facts of the case are as follows:

3. The petitioner while serving as a Conductor, was levelled with charges, stating that he had permitted to board two flower baskets on the roof of the bus, for which, he had not collected charges of Rs.2x75 and thereby, committed misappropriation of funds of the Corporation, through the Charge Memo dated 12.05.2015. Not being satisfied with the reply given by the petitioner, an inquiry came to be conducted, in which, all the charges against the petitioner was held to be 'proved' by the Inquiry Officer in his report dated 01.04.2016. Pursuant to the proven charges, the second respondent herein being the Disciplinary Authority, had issued



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a second show cause notice dated 25.06.2016, calling upon the petitioner to give his further explanation to the Inquiry Officer's report, for the proposed punishment of removal from service. The petitioner had also given his further explanation on 11.07.2016, in which he had taken a specific stand that the authors of the two documents relied upon by the Inquiry Officer, were not examined and therefore, the inquiry itself was in violation of the principles of natural justice. The petitioner had also stated that the earlier punishment issued by the Department against him were very minors one, which should not be taken as precedence. In this background, the Disciplinary Authority/second respondent herein, had imposed the punishment of removal from service, through its order dated 17.08.2016. The dismissal order was challenged in I.D.No.4/2017 and the Labour Court, through its award dated 16.08.2018, had rejected the Industrial Dispute. The petitioner now challenges the award of the Labour Court in the present Writ Petition.

4. The learned counsel for the petitioner submitted that the Disciplinary Authority had not considered the petitioner's further explanation dated 11.07.2016, which was given by him pursuant to the



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second show cause notice dated 25.06.2016. He further submitted that the punishment is disproportionate to the charges.

5. Per contra, the learned Standing Counsel for the Corporation submitted that the petitioner herein had indulged himself in various misconducts on 20 previous occasions, for which, specific punishments were imposed. He would also state that inquiry was conducted in a fair and proper manner and since the further explanation given by the petitioner was duly considered in the impugned order of punishment wherein, the Disciplinary Authority had referred to the further explanation, there was no infirmity in the dismissal order. He would also state that since the Labour Court had found the inquiry to be conducted in a fair and proper manner, had rightly rejected the Claim Petition.

6. I have given careful consideration to the submissions made by the respective counsels.

7. The very purpose for which the second show cause notice is issued by the Disciplinary Authority, pursuant to the Inquiry Officer's



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report, holding the charges as 'proved', is to render a final opportunity to the delinquent workman to raise all his objections touching upon the conduct of the inquiry. When such a show cause notice is issued pursuant to the proven charges, the Management would also be justified in proposing the punishment also. However, when the concerned workman renders his explanation to the second show cause notice, the Disciplinary Authority is mandated to consider the grounds raised in the further explanation and render his independent finding thereof.

8. In the case of '*Managing Director, ECIL, Hyderabad & others Vs. B. Karunakar & others*' reported in (1993) 4 SCC 727', the aforesaid aspect was considered in the following manner:-

..... *“25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report. the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and*



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proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted."

9. By applying the ratio laid down in the aforesaid decision and by taking into account of the fact that the Disciplinary Authority had not rendered any findings on the objections raised by the petitioner in his further explanation dated 11.07.2016, the order itself is deemed to be a non-speaking order, which cannot be legally sustained.

10. This apart, the inquiry itself would stand vitiated on a major procedural flaw, whereby, the Inquiry Officer had placed reliance on a statement made by one Kumar, who is claimed to be the owner of the two flower bags, for which the petitioner had not issued proper tickets. Though the statement was marked in the inquiry, the concerned owner namely Kumar was not examined as a witness.

11. It is a settled proposition on the procedure to be adopted during



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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 witness.

12. 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 judgement 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 evidence collected during investigation by the Investigating Officer against all the accused by itself could not be



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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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13. 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 respondent Corporation cannot be a proper or relevant witness to speak about the contents of the letter given by Kumar, in connection with the presence of two flower bags in the bus. If that be so, the findings of the Inquiry Officer on the statement of Kumar would stand vitiated and consequently, all other proceedings thereafter would be nullified.

14. The Labour Court seems to have misconstrued the inquiry proceedings by holding that three management witnesses were examined and terming them as M.W.1 to M.W.3. It has further held that M.W.2 and M.W.3 were not cross examined by the petitioner, even though such witnesses were not orally examined in the inquiry. Thus, the consequential punishment requires interference.

15. The Disciplinary Authority, while weighing the proportionateness of the charges to the proposed punishment, had also



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Consequently, there shall be a direction to the respondents herein, to pass appropriate orders, by modifying the petitioner's punishment of removal from service and pass orders directing for reinstatement, together with continuity of service. However, the petitioner would not be entitled for the back wages from 17.08.2016, which is the date of his dismissal, or any other attendant and monetary benefits. Such an order shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

18. With the above directions, the Writ Petition stands partly allowed. No costs. Connected miscellaneous petition is closed.

19.04.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

Sni/hvk

To

1.The General Manager,
Tamil Nadu State Transport Corporation Villupuram Ltd.,
Trichy Road,
Vazhudhareddy, Villupuram.



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2. The General Manager,
Tamil Nadu State Transport Corporation Villupuram Ltd.,
Thiruvannamalai Region,
Thiruvannamalai District.



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M.S.RAMESH,J.

Sni/hvk

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