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W.P.No.4017 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

CORAM :

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

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1. D.Gnanasekaran (*died*)
 2. G.Lalitha
 3. G.Jeevitha
 4. G.Kejitha
 5. D.Pushpam
- ...Petitioners

(P2 to P5 substituted as LR's of the deceased sole petitioner vide order dated 22.06.2023 made in WMP.No.24501/2022 in W.P.No.4017/2017)

Vs.

1. The Presiding Officer,
Labour Court,
Coimbatore.
 2. The Management,
Tamil Nadu State Transport Corporation
(Coimbatore Division I) Ltd.,
Mettupalayam Road, Coimbatore – 641 043.
- ...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records and papers from the files of the first respondent in I.D.No.382 of 2004 and quash the impugned award made therein dated 22.7.2015 in so far as holding the non employment of the first petitioner to be justified and denying the first petitioner's claim for reinstatement, back wages, continuity of service and all other attendant benefits.



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For Petitioners : Mr.K.Bharathi, for P2 to 5

For Respondents : Mr.A.Sundaravadhanam, for R2

ORDER

This Writ petition has been filed seeking to quash the award passed by the 1st respondent dated 22.07.2015 in I.D.No.382 of 2004.

2. The case of the petitioner is that, the 1st petitioner joined the services of the 2nd respondent as a conductor on 17.12.1995. While so, the respondent corporation issued a charge memo dated 02.01.2001 as against the 1st petitioner, alleging that he misappropriated the corporation money by not issuing tickets to three passengers, after collecting the ticket fare from them, for which, he sent a reply dated 22.01.2001 denying the said allegation, however, without considering the same, a departmental inquiry was conducted, as a result of which, in consequence of the findings in the inquiry report, the 1st petitioner was dismissed from service, by order dated 21.05.2002. Aggrieved by the same, the 1st petitioner initiated conciliation proceedings before the Labour Officer, Coimbatore and failure of which resulted in raising an industrial dispute before the 1st respondent in I.D.No.



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382 of 2004, however, the 1st respondent, without considering any of the above said facts, dismissed the dispute raised by the 1st petitioner by the present impugned award. Challenging the same, the 1st petitioner filed this writ petition.

3. Learned counsel for the petitioners submitted that, though the departmental proceedings were initiated as against the 1st petitioner on the ground that he misappropriated the corporation funds by not issuing tickets each worth about Rs.1.50 paise to three passengers, after collecting a total sum of Rs.4.50 paise from them, however, it is pertinent to note that, the domestic enquiry was not conducted in a fair and proper manner, and during the enquiry proceedings, the passengers who travelled in the bus during the occurrence of alleged misappropriation, were not examined and the enquiry officer had conducted the enquiry in a biased manner and had not taken into consideration the explanation submitted by the 1st petitioner and had not let the respondent corporation to cross examine the statement given by the 1st petitioner. Further, pursuant to the conclusion of the enquiry proceedings, the respondent corporation dismissed the 1st petitioner from service without



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awaiting for the 1st petitioner's explanation. Further, the 1st petitioner received the amount from the respective passenger and returned the balance amount to them, however, failed to issue tickets and for the said misconduct, instead of imposing some other punishment, imposing the maximum punishment of dismissal from service is highly disproportionate. He further submitted that, though the 1st petitioner had not marked any documents before the Labour Court, however, the Labour court, by exercising its power under Section 11A of the Industrial Disputes Act, 1947, can very well examine and analyse the documents placed by the respondent corporation and decide whether the evidence led by the respondent corporation establishes the allegation made as against the 1st petition and can pass a reasonable order. However, in the present case, the labour court, without exercising its power, had mechanically dismissed the dispute raised by the 1st petitioner, which is not sustainable. Accordingly, he prayed for appropriate orders.

4. Leaned counsel appearing for the 2nd respondent submitted that, for non-issuance of tickets to the passengers despite collecting the ticket fare



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from them, the respondent corporation initiated departmental proceedings as against the 1st petitioner and during the enquiry, the respondent corporation examined its witnesses and though the 1st petitioner was given sufficient opportunity to cross examine the management side witnesses, he miserably failed to prove his innocence and even before the labour court, the 1st petitioner had not taken any steps to examine himself as a witness and had not marked even a single document to substantiate his claim. Further, though the copy of the enquiry report was sent to the 1st petitioner along with the 2nd show cause notice, he had not come forward to submit appropriate explanation to the same and gave only vague reasons, as the same is not satisfactory, the dismissal order dated 21.05.2002 came to be passed as against the 1st petitioner. Further it is pertinent to note that, the 1st petitioner was punished for more than 17 misconducts during his service, out of which, 10 misconducts are of similar in nature. Hence, the labour court, after taking into consideration all the above said facts, had rightly dismissed the dispute raised by the 1st petitioner, which does not warrants interference of this Court. Accordingly, he prayed for dismissal of this Writ petition.



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

6. Admittedly, the 1st petitioner joined the services of the 2nd respondent as a conductor in the year 1995 and for certain misconduct committed by the 1st petitioner, he was dismissed from service, based on the enquiry report given by the enquiry officer. Challenging the said dismissal, the 1st petitioner raised an industrial dispute before the 1st respondent in I.D.No. 382 of 2004, in which the present impugned award came to be passed, dismissing the dispute raised by the 1st petitioner.

7. A perusal of the material documents placed on record, particularly the Ex.M12 reveal that, the 1st petitioner was previously punished ten times for the same misconduct. The 1st petitioner being a conductor by profession, it is his duty to issue tickets and collect fare and then deposit the same with respondent corporation and when the 1st petitioner fails to do so, that too several times, he must be punished for the same, since he holds the money in trust of the respondent. In such an event, when the charges of misconduct towards the misappropriation of money are proved, that too, the 1st petitioner being a habitual offender and had committed the misconducts of similar



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nature several times during his service, no leniency can be shown towards him, since, if any leniency shown in this regard it would be misplaced sympathy and would set bad precedent for others to follow. Though the 1st petitioner committed the same misconduct for ten times, the respondent corporation had imposed only a small punishment on previous occasions and repeating the same over and over again, the respondent corporation had rightly inflicted the punishment. Hence, this Court does not find any perversity in the impugned award dated 22.07.2015 passed by the Labour court, dismissing the dispute raised by the 1st petitioner in I.D.No.382 of 2004.

8. For the reasons aforesaid, this Writ petition stands dismissed. No costs.

21.08.2023

skt

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

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M.DHANDAPANI, J.

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