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W.A. No. 3189 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 3189 of 2023

&

C.M.P. No. 26134 of 2023

A. Ram Ganesh

..Appellant

Vs.

1. The Management,
Tamil Nadu State Transport
Corporation (CBE) Ltd.,
No.37, Mettupalayam Road,
Coimbatore – 43.

2. The Special Deputy Commissioner
of Labour (Conciliation),
DMS Compound, Chennai – 6.

..Respondents

Prayer: Writ Appeal as against the order dated 22.11.2022 passed in

W.P. No. 37952 of 2016.



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For Appellant :: Mr.V. Ajoy Khose

For Respondents :: Mr.A. Sundaravadanan

J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

The present appeal has been preferred by the workman challenging the order dated 22.11.2022 in W.P. No. 37952 of 2016 whereby the order of the Special Deputy Commissioner of Labour (Conciliation), Chennai, rejecting the approval petition filed by the Management was interfered with and the matter was remanded to the said authority for fresh consideration.

2. The appellant/workman joined the service of the Management as a Conductor on 18.09.1992. On the premise that he did not issue ticket to a passenger after collecting the ticket fare and that an excess amount of Rs.29 was available in his cash bag, a charge memo dated 21.07.2010 was issued, which was followed by an enquiry. On conclusion of the enquiry, the Enquiry Officer found that the charges were proved pursuant to which the Management issued a show cause notice dated 04.01.2011 and taking note of the reply sent by the workman to the said notice, along with the past



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records, a provisional conclusion was arrived at to dismiss the workman.

Thereafter, a second show cause notice dated 29.01.2011 was issued by the Management seeking response of the workman with regard to the decision arrived at. Not satisfied with the reply sent by the workman, the Management proceeded to pass an order of dismissal on 20.05.2011. As an Industrial Dispute between the Union and the Management was pending before the Authority, the Management filed an Approval Petition in A.P. No. 146/2011 under Section 33(2)(b) of the Act seeking approval of their action of dismissing the workman from service.

3. In the light of the judgment of the Hon'ble Apex Court in ***Lallaram Vs. D.C.M.Chemicals, reported in AIR 1978 SC 1004 = 1978 (3) SCC 1***, the authority, while observing that all the norms were complied with by the employer, chose to interfere with the order of punishment and refused to grant approval on the ground that neither the driver nor the passengers were examined, Aggrieved by the same, the Management filed W.P. No. 37952 of 2016 and the learned Single Judge, while accepting the contention of the Management partially, quashed the order passed by the



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authority with reference to issue Nos. 1 & 2, namely, “*whether a proper domestic enquiry in accordance with the relevant rules, standing orders and principles of natural justice was held? and “whether a prima facie case for dismissal based on admissible legal evidence before the domestic enquiry was made out?”*” and remanded the matter back to the authority for fresh consideration stipulating a time limit of four months to take a decision with regard to issues Nos.(1) & (2) on merits and in accordance with law. Questioning the said rendering, the workman is before this Court in this intra court appeal.

4. Heard the learned counsel on either side.

5. The misconduct for which the workman was proceeded with by the Management was that he had collected Rs.5 for issuance of ticket from a female passenger, but failed to issue the ticket or rather issued an inappropriate ticket and also that he allowed a male passenger to travel beyond his destination. The learned Single Judge, in paragraph No.3 of the order under challenge, has observed as follows:

“This Court is of the considered opinion that the nature of departmental disciplinary proceedings cannot be compared



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with the criminal proceedings. Strict standard of proof is required to convict a person under Criminal Law. But preponderance of probability is enough to punish an employee under the Discipline and Appeal Rules. Thus, the standard of proof required for a criminal case and departmental disciplinary proceedings cannot be compared with. Practical approach is required in such circumstances, where the department disciplinary proceedings are initiated against an employee.”

It would be worthwhile to state that the Hon'ble Supreme Court, in the judgment rendered in ***State of Haryana V. Rattan Singh & Ors*** reported in ***1977 2 SCC 491***, held that *strict and sophisticate rules of evidence under the Indian Evidence Act may not apply in a disciplinary enquiry*. The learned Single Judge, though held that the 2nd respondent herein ought to have considered the available evidences on record and formed an opinion as to whether the allegation against the workman was established or not, however, proceeded to remand the matter to the authority for fresh consideration insofar as issues Nos. (1) & (2) are concerned, stated supra and to render a decision within a period of four months.



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6. The workman was dismissed from service on 20.05.2011 and the approval petition was filed in the year 2011 and more than a decade has gone by since then. In the event of the matter being remitted, it will give rise to one more round of litigation, namely, writ petition or writ appeal and thereafter to the Supreme Court. In case, the employer gives up the approval petition, he is entitled to raise an industrial dispute under Section 2A of the Act provided there is no delay.

7. That being so, in order to shorten the life of litigation, this Court posed a query as to whether the employee is willing to give up backwages and receive the benefits only for the period of service rendered. The employee has filed an affidavit dated 15.11.2023, the contents of which are scanned and reproduced infra:



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AFFIDAVIT OF UNDERTAKING OF A.RAM GANESH

I, Ram Ganesh, S/o.Anga Chettiyar (late), aged about 60 years, residing at Vedammial Thottam, Alandurai, Coimbatore, now temporarily come down to Chennai, do hereby solemnly affirm and state as follows;

1. I am the Petitioner herein and appellant in the above Writ Appeal. I am well acquainted with the facts of the case.

2. I state that I was employed as a Conductor in the Respondent Corporation from 18.09.1992 till I was dismissed from service by an order dated 20.05.2011. I have rendered 19 years of unblemished record of service.

A. Ram Ganesh



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3. I state that the Respondent Corporation filed an Application in AP No.146/2011 under Section 33(2)(b) of the ID Act before The Special Deputy Commissioner of Labour (Conciliation), Chennai, seeking Approval for the order dated 20.05.2011, dismissing me from service, since an Industrial Dispute was pending conciliation before the said Authority.

4. I state that the Authority passed an order dated 09.05.2016 rejecting the Approval Application in A.P.No.146/2011. Instead of allowing me to join duty as per the Authority order, the Respondent Corporation filed a Writ Petition in W.P.No. 37952/2016 questioning the aforesaid order dated 09.05.2016.

5. I state that the said Writ Petition in W.P.No.37952/2016 was partially allowed directing the Special Deputy Commissioner of Labour to decide the issue nos. 1 and 2 alone on merits within a period of four months.

6. I respectfully submit that I do hereby undertake to forego the benefits for the period from the date of my dismissal to the date of superannuation, which fell due on 31.07.2023.

7. I respectfully submit that I do hereby respectfully state and submit that I agree to get terminal benefits namely pension, gratuity, earned leave salary etc., by treating my dismissal as retirement/voluntary retirement.

I therefore, pray that this Hon'ble Court may be pleased to accept this affidavit on file and dispose the appeal based on my above undertaking and thus render justice.

Solemnly affirmed at Chennai
this the 15th day of November 2023
and signed his name in my
presence.

D. Ramesh
BEFORE ME

D. Ramesh
5769/24
ADVOCATE:MADRAS
POZUNIL ELAVENIL
F-3 B, Arignaperi plaza,
LC Area,
Chennai-1



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8. Mr.A. Sundaravadanan, learned counsel for the Management would submit that the misconduct committed by the workman is a serious one and the punishment imposed by the Management is perfectly in order and they are able to justify that the charges are proved and that they complied with all the norms as contemplated in *Lalla Ram's case*. Since the ticket value is Rs.5 and that the employee has rendered 19 years of service, taking note of the totality of circumstances and that the charges even if they are proved in an industrial dispute raised by the employer, the Court will have to necessarily interfere with the punishment on the ground of disproportionality. Hence, as stated supra, in order to shorten the life of litigation, we are inclined to grant terminal benefits of gratuity and pension for the actual service rendered from 18.09.1992 to 20.05.2011, ie., the date of dismissal by converting the punishment of dismissal into one of compulsory retirement. Accordingly, the workman would be entitled to Gratuity and Pension for the actual service rendered from 19.09.1992 to 20.05.2011 and the same shall be paid within a period of three months from the date of receipt of a copy of this order. As the employee has stated that



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he has rendered 19 years of blemishless service, if any Provident Fund Contribution is made upto the date of termination, the benefits of the same shall be extended to the employee.

9. The writ appeal is disposed of accordingly. No costs.

Connected C.M.P. is closed.

(S.V.N.J.) (K.R.S.J.)
17.11.2023

nv

To

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