



W.P.No.6721 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.6721 of 2017

and

W.M.P.Nos.7262, 20789 and 20790 of 2017

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam Division-I),
Kumbakonam.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Cuddalore.

2. C.Jawahar,
Conductor.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the first respondent made in I.D.No.11 of 2003 dated 24.12.2010 and to quash the same as illegal and perverse.



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For Petitioner : Mr.C.Senapathi
For Respondents : R1 - Court
Mr.D.Shanmuganathan
for Mr.S.Senthil Selvan for R2

ORDER

The petitioner is the Management challenging the award dated 24.12.2010 in I.D.No.11 of 2003 whereby the Labour Court has ordered reinstatement of the second respondent without continuity of service and backwages, the petitioner is before this Court by way of filing the present Writ Petition.

2. The case of the petitioner / Management is that the second respondent was working with the petitioner Management as a Conductor and a surprise checking was found to be in possession of excess amount of Rs.2.25 paise which did not corresponding with the entries in the entry sheet. For the said misconduct, the charge memo was issued, explanation was given and not satisfied with the same, domestic enquiry was conducted. Based on the Enquiry Officer's report, the second respondent was dismissed



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from service on 29.05.2002. Challenging the said dismissal, the second respondent filed Industrial Dispute in I.D.No.11 of 2003 before the Labour Court under Section 2A(2) of the Industrial Tribunal Act, 1947. The Labour Court after considering the materials placed before it and came to the conclusion that the punishment was disproportionate to the charges and directed the petitioner / Management to reinstate the second respondent without continuity of service and backwages. Aggrieved by the said order, the petitioner / Management has filed the present Writ Petition.

3. The learned counsel for the petitioner / Management would submit that the first respondent has failed to see that the past records of the delinquent second respondent and that the second respondent was a habitual delinquent and as fiddled with money and had indulged in swindling the money even earlier. Hence, the Labour Court was not justified in ordering without continuity of service and should have upheld the order of dismissal passed by the petitioner / Management.



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4. The learned counsel for the second respondent submitted that the Management, without considering the explanation submitted by him dismissed from service on 29.05.2002 which is against the principles of natural justice. The Labour Court has gone into factual aspects in its entirety and on perusal of the exhibits filed before the Labour Court, namely, Exs.W1 to W7 came to the conclusion that the ticket books supplied by the petitioner / Management to the conductors for issuance of tickets to the passengers are containing some empty ticket slips and that there was no intention on the part of the second respondent to issue empty ticket and that the petitioner had not misappropriated the ticket fare. The Labour Court also took into consideration the fact that the second respondent was earlier punished with stoppage of increments for two years for issuance of empty tickets without printing details and hence, the punishment now imposed on the petitioner is disproportionate to the charges leveled against him. Accordingly, the Labour Court was justified in setting aside the order of dismissal and passed an award for the reinstatement of the second respondent. Raising the above contentions, the learned counsel for the



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second respondent seeks indulgence of this Court in dismissing the Writ Petition.

5. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

6. Admittedly, the second respondent was working as a Conductor in the petitioner Transport Corporation. During that time of surprise check, he was found in possession of excess amount of Rs.2.25 paise, therefore, the petitioner / Management has imposed the punishment of dismissal from service on the second respondent. Challenging the same, the second respondent has filed Industrial Dispute in I.D.No.11 of 2003 before the Labour Court.

7. Considering the materials available on record, the Labour Court has rightly held that the charges leveled against the petitioner, i.e., dismissal



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from service is disproportionate and directed the petitioner / Management to reinstate the second respondent without continuity of service and backwages. Therefore, it does not require any interference of this Court.

8. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned in this Writ Petition.

9. Normally, this Court would not interfere with the punishment imposed on the delinquent unless it is shown to be arbitrary, perverse, illegal and further the punishment imposed on the delinquent shocks the conscience of this Court, as this Court is guided by the ratio laid down in ***Prem Nath Bali – Vs – High Court of Delhi (2015 (16) SCC 415)***. So long as the punishment imposed is not disproportionate to the charges framed against, the Courts normally would not interfere with the punishment.



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10. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere with the same in exercise of powers under Article 226 of the Constitution. In ***Prem Nath Bali – Vs - High Court of Delhi***, reported in **2015 (16) SCC 415**, the Hon'ble Supreme Court held as under :-

“20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the



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delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”

(Emphasis Supplied)

11. Considering the facts and circumstances of the case and on the basis of the materials placed on record, this Court is of the considered view that since the Writ Petition is filed in the year 2017, i.e., after seven years of passing of the award, the second respondent would have attained the age of superannuation by now. Hence, no purpose will be served in directing the petitioner / Management to reinstate the second respondent. Therefore, the petitioner / Management is directed to settle the entire benefits due to the second respondent within a period of four weeks from the date of receipt of a copy of this order.



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12. With the above observations, this Writ Petition is dismissed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

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