



WEB COPY



W.A. No.3286 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN
and
THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.3286 of 2023 & C.M.P. No.26762 of 2023

The Management
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.
Periyamilaguparai
Trichy
represented by its Managing Director

Appellant

v

1 M. Vasudevan

2 The Special Deputy Commissioner of Labour (Conciliation)
DMS Compound
Chennai

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the
order dated 24.01.2023 passed in W.P. No.34380 of 2014.

For appellant
For R1
R2

Mr. Murali Vinodh
Mr. K. Malaikannu
Authority

JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

This writ appeal impugns the order dated 24.01.2023 passed by a Single

Bench in W.P. No.34380 of 2014.

<https://www.mhc.tn.gov.in/judis>



2 For the sake of clarity, the parties will be adverted to as per their rank in this writ appeal.

3 The succinct facts giving rise to the present writ appeal could be stated thus:

3.1 The first respondent workman joined the services of the appellant Corporation as a Conductor on 02.02.1994. On the ground that he received a sum of Rs.95/- from a group of 3 ½ passengers during a trip from Karaikkudi to Devipattinam beforehand, and did not issue tickets to them till Checking Inspector boarded the bus and thereby, misappropriated the said sum of Rs.95/- belonging to the appellant Corporation and besides, since there was a shortage of Rs.506/- in his cash bag at the time of checking, he was issued with a charge memo dated 30.04.2007 and not satisfied with his explanation dated 15.05.2007, a domestic enquiry was conducted, wherein, the first respondent workman participated with an observer.

3.2 The Enquiry Officer, *vide* his report dated 18.11.2008, held that the charges against the first respondent workman were proved. Pursuant thereto, a copy of the enquiry report was furnished to the first respondent workman on 26.08.2009 seeking his explanation and not satisfied with his explanation dated 14.09.2009 and also given his past record of service and other extenuating



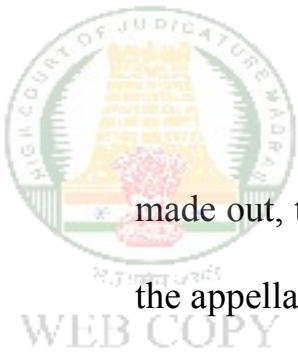
circumstances, he was dismissed from service by the appellant Corporation on 21.12.2010, paying him one month's wages as per Section 33(2)(b) of the Industrial Disputes Act, 1947.

3.3 Owing to pendency of an industrial dispute between the Union and the appellant Corporation, the appellant Corporation filed an approval petition before the second respondent authority under Section 33(2)(b), *ibid.*, in Approval Petition No.250 of 2010.

3.4 In the approval petition, the stand of the appellant Corporation was that the charges proved against the first respondent workman relate to misappropriation and dishonesty, which cannot be taken lightly and no sympathy or leniency can be shown to the first respondent workman.

3.5 *Per contra*, the stand of the first respondent workman in the approval petition was that out of the two charges framed, the Enquiry Officer has found him guilty of only the first charge and has ignored the second charge and when no finding is given in respect of the second charge, the second charge does not survive at all.

3.6 The second respondent authority, *vide* order dated 23.04.2013, on the basis of the judgment of the Supreme Court in **Lalla Ram v D.C.M. Chemical Works [AIR 1978 SC 1004]**, analysed five principles laid down therein independently and rejected the approval petition holding that a *prima facie* case for dismissal, based on legal evidence adduced before the domestic enquiry, is not



made out, though the findings in respect of other four principles, were in favour of the appellant Corporation.

3.7 The said order of the second respondent authority was tested before the Single Bench in W.P. No.34380 of 2014. The Single Bench, by order dated 24.01.2023, concurred with the finding of the second respondent authority that non-examination of the only person who can bring the truth before the Enquiry Officer is fatal and upheld the order of the second respondent authority.

3.8 Thereagainst, the Corporation has preferred the instant writ appeal.

4 Heard the learned counsel for the appellant Corporation and the first respondent workman.

5 On a perusal of the findings of the Enquiry Officer, we are unable to accept the finding of the second respondent authority that no *prima facie* case is made out for dismissal based on legal evidence adduced before the domestic enquiry. The reason for we observing so is, it is a clear case of receipt of Rs.95/- from 3 ½ passengers and tickets were attempted to be issued to them only after the Checking Inspector boarded the bus. Moreover, there is no whisper in the report of the Enquiry Officer about the shortage of Rs.506/- in the cash bag of the first respondent workman, which has resulted in the Enquiry Officer holding that silence amounts to acceptance.

6 Though it has been contended by the first respondent workman that the second charge pertaining to shortage of Rs.506/- was ignored by the Enquiry



Officer and no finding was given therefor and thus, the second charge does not survive any longer, the said contention cannot be correct in view of the fact that there is a specific finding in the report of the Enquiry Officer, the relevant portion of which is extracted below:

”மேலும் குற்றச்சாட்டு இரண்டிற்கு கு.சா. மறுப்பேதும் தெரிவிக்காத நிலையில் அவர் குற்றத்தை ஏற்றுக் கொள்கிறார் என முடிவு செய்கிறேன்.”

7 In case, we set aside the order of the second respondent authority and remand the matter, the appellant Corporation is entitled to lead evidence to substantiate the case, more so, in the light of the judgment of the Supreme Court in **John D'souza v Karnataka State Road Transport Corporation [(2019) 18 SCC 47]** and if the matter is remanded, still, it is open to the first respondent workman to give up the application under Section 33(2)(b), *ibid.*, without prejudice to his rights in the industrial dispute.

8 Since there is a categorical finding of the second respondent authority that the enquiry is not correct, in case, we uphold the said order, the first respondent workman is entitled to raise an industrial dispute, since, the finding rendered in a petition filed under Section 33(2)(b), *ibid.*, is not a bar for raising an industrial dispute under Section 10, *ibid.*, or under Section 2-A, *ibid.*, provided it is well within the time excluding the period during which the matter was pending before the authority and the Court.



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9 Since the appellant Corporation is amenable to the writ jurisdiction of this Court as has been held in **Indian Bank v K.S. Gurumoorthy [(1990) 2 LLN 355]**, in order to shorten the life of the litigation and also considering the fact that there is no misappropriation, but, only an alleged attempt for misappropriation, and, at the same time, considering the past record of the first respondent workman and also his date of retirement being 31.12.2024, we hold that the question of reinstatement does not arise.

10 However, since the first respondent workman has rendered about 17 years of service between 1994 and 2010, we convert the punishment of dismissal from service into one of compulsory retirement and hold that he is entitled to pension with effect from 01.12.2023 based on the last drawn pay, *i.e.*, the pay drawn on 21.12.2010, payable from January 2024. Further, he is also entitled to Gratuity and other benefits for the period of actual service rendered by him as stated above, which shall be paid to him within a period of two months from the date of receipt of a copy of this judgment. It is made clear that he is not entitled to backwages and other benefits.

This writ appeal stands disposed of in the above terms, sans costs. Connected C.M.P. stands closed.

(S.V.N., J.) (K.R.S., J.)
24.11.2023

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W.A. No.3286 of 2025

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To

The Special Deputy Commissioner of Labour (Conciliation)
DMS Compound
Chennai



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S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

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