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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 31-01-2023

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.Nos.390 & 392 of 2020

A.Kanjeevanam ... Appellant in both appeals

-VS-

1.Tamil Nadu State Transport Corporation,
(Madurai Division,IV) Ltd.,
rep.by its Managing Director,
Bypass Road,
Dindigul.

2.The Presiding Officer,
Labour Court,
Tirichirapalli.

... Respondents in both appeals

W.A.No.390 of 2020 is filed under under Clause 15 of the Letters Patent against the order, dated 24.07.2019, passed in W.P.No.1880 of 2003, on the file of this Court.

W.A.No.392 of 2020 is filed under under Clause 15 of the Letters Patent against the order, dated 24.07.2019, passed in W.P.No.28928 of 2003, on the file of this Court.



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For Appellant in both appeals : Mr.V.Rajinikanth

For Respondent 1 in both appeals : Mr.S.Sivasubramani

JUDGMENT

These appeals have been preferred by the appellant employee against the common order of the learned single Judge, dated 24.07.2019, passed in W.P.Nos.1880 of 2003 and 28928 of 2003, whereby the award passed by the Labour Court, Tiruchirapalli, in I.D.No.165 of 1995, dated 29.04.2002, was interfered with.

2. The appellant employee was placed under suspension on 25.08.1988 and a Charge Memo was issued to him on 29.08.1988, on the ground that the employee, having collected money for issuance of bus tickets and by not issuing tickets, allowed the passengers to travel. For that, the employee was issued a show cause notice, calling for explanation. Not satisfied with the explanation given by the employee, an inquiry was conducted and, based on the report of the Inquiry Officer, dated 24.03.1989, a second show cause notice was issued to him, for further explanation. Thereafter, based on the findings of the Inquiry Officer in his report, a punishment of dismissal from service was imposed on the employee, by taking into account the repeated incidents of such nature, which were 25 in number. Aggrieved over the said dismissal, the employee



raised an industrial dispute before the Labour Court, Madurai, in I.D.No.551 of 1992 and, thereafter, on constitution of the Labour Court at Tiruchirapalli, the matter was transferred and adjudicated in I.D.No.165 1995.

3. The main contention of the appellant employee was that he was asked to sign a blank paper, which was utilised for the purpose of proving the charges, and hence the same ought not to have been looked into for establishing charges and that there was no other evidence in support of the contention of the respondent employer to prove the charges. The said contention was not accepted by the Labour Court, which categorically held as follows :

"11.... Thus, as per the award, dated 30.06.94, the internal inquiry was conducted following the law and principles of natural justice. That the checking inspectors have obtained signature of R.Lakshmanan in Ex.MA14 in the presence of the petitioner and that after 13 years said Lakshmanan was examined as WW2 in this Court. In his deposition, he had stated that he had signed the Ex.MA14 in a blank sheet. He has to substantiate the same. No person would state after 13 years that he had signed in blank paper. WW2 had stated that checking inspectors had obtained his signature in a blank paper. He had to affix his signature as compelled by the inspectors. Even the petitioner in internal enquiry on 08.02.89 has stated that passengers were threatened by the inspectors and statement obtained from him. From this, it would be evident that statement Ex.MW14 was obtained by the inspector from WW2 will be



clear. WW2 is wrong in stating that he had signed in blank paper. There is no necessity for inspector to falsely obtain statement from the passengers against the petitioner. There was no previous enmity between them. Further, during the cross-examination by the petitioner in the internal enquiry that it was admitted in affirmative when asked in normal course, if a passenger has lost ticket, he would be issued with a ticket after collecting the amount. But there was no necessity for the checking inspector to receive the amount from WW2. Had he actually lost his ticket, there is no necessity to collect the fare from WW2. Thus, based on the above, the evidence of WW2 is not a reliable one. There was nothing on record to show that the Ex.MA14 was obtained under threat. Further, petitioner had not come forward to examine him as witness. A perusal of past track record of the petitioner from service record would go to show that he was earlier punished for such delinquencies. He has not shown any sign of improvement. Thus, it should be presumed that the charges against the petitioner stand proved.

12. After having considered the arguments of both sides, orders produced by both sides and oral evidences adduced by them, the contention of the learned counsel for the Management will have to be accepted to the effect that there are contradictions in the deposition of WW1 and WW2. In connection with charges levelled against the petitioner, WW1 had stated that he was directed to sign the blank sheet viz. Ex.MA3 and that the same was subsequently filled. They will have to be taken as an afterthought. The petitioner had not given any evidence in connection with charge levelled against him. This itself would go to



show that the Management had proved the charges against the petitioner.

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13. Hence, in view of what was stated above, charges levelled against the petitioner by the Management stands proved and the issue No.1 is answered accordingly."

4. The Labour Court has held that the evidence of WW2 that the employee has signed in a blank paper cannot be accepted and that he has already tendered in evidence that the passengers have been threatened by the Inspector and the statements obtained from them. However, based on the evidence let in before the Inquiry Officer and the material available before it, the Labour Court came to the conclusion that the charges have been held proved. However, taking note of the fact that the money misappropriated was very meagre and that even though the past record was bad, the punishment imposed was very severe in nature and disproportionate and, accordingly, the Labour Court directed that the employee should be reinstated with continuity of service but without backwages. Challenging that finding, a writ petition was filed by the employee and the learned single Judge, after finding that the evidences of WW1 and WW2, which were on record, were completely against the employee and that the charges were proved, which was accepted by the Labour Court, held that it cannot be construed that the Labour Court had arrived at the conclusion on hypothetical



presumption and surmise and it failed to consider the evidences of WW1 and WW2, who have stated that they signed only in a blank paper on threat of fine, and erroneously rejected the evidences. The learned single Judge, holding that the charges of misappropriation were grave in nature, refused to interfere with the finding of the Labour Court in upholding the charges and rejected the writ petition filed by the employee. However, the writ petition filed by the management was allowed on the ground that the employee had not denied that he signed in the statements given by WW1 and WW2. The learned single Judge further held that the employee had not let in any evidence either before the Inquiry Officer or before the Labour Court that he signed the statements given by the passengers under threat. The learned single Judge, on going through the material available before her, also held that the employee had committed similar misconduct earlier and the reasoning given by the Labour Court for setting aside the order of dismissal on the ground that the employee was without employment for five years and that itself was sufficient towards punishment was not justifiable.

5. We are not inclined to accept the award of the Labour Court in ordering reinstatement after holding that the charges were proved. It is no doubt true that the Labour Court and the Industrial Tribunal have wide powers to interfere with the punishment imposed by the employer even if charges are proved, provided the punishment is disproportionate to the gravity of misconduct, otherwise, the purpose of



Section 11A of the Industrial Disputes Act, 1947, would be defeated. The said principle is not applicable to the case on hand. The theory of signing a blank paper, which has been utilised against the employee, was not accepted. Though the amount of money said to have been misappropriated is very meagre, the past history of the employee, which has been considered by the employer, and the evidence thereof produced before the Court, is very clear that the employee had 25 bad past conducts, for which, no explanation was given by the employee. Therefore, we are of the view that the order of the learned single Judge, setting aside a portion of the award in ordering reinstatement without backwages, is perfectly valid, and the other portion of the award, which has been questioned by the employee that the charges have not been established, has been rightly confirmed.

6. Writ Appeals are, accordingly, dismissed. No costs.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
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(S.V.N.,J.) (J.S.N.P.,J.)
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