



W.P.(MD)No.23556 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 23556 of 2015
and
CONT.P(MD)No.1009 of 2022
and
M.P(MD)No. 1 of 2015
and
W.M.P(MD)No.8065 of 2016

W.P.(MD)No. 23556 of 2015

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division II) Limited,
Periyamilaguparai,
Tiruchirapalli.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Tiruchirapalli.

2. A. Pilavendiran

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records relating to the impugned



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order passed by the 1st Respondent, dated 25.02.2014 in I.D.No.67 of 2002 and quash the same.

For Petitioner : M/s.D.Sivaraman,
Standing Counsel

R-1 : Court

For R-2 : Mr.T.Lenin Kumar

CONT.P(MD)No.1009 of 2022

A. Pilavendiran

... Petitioner

Vs.

S.Singaram,
The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division II) Limited,
Periyamilaguparai,
Tiruchirapalli.

... Contemnor/petitioner

PRAYER: Contempt Petition filed under section 11 of Contempt of Courts Act, to punish the contemnor/petitioner/petitioner for his willful and deliberate disobedience of the order of this Court in M.P.(MD)No.1 of 2015 in W.P.(MD) No.23556 of 2015, dated 04.01.2016.

For Petitioner : Mr.T.Lenin Kumar

For R-2 : M/s.D.Sivaraman,
Standing Counsel



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COMMON ORDER

This writ petition in ***W.P.(MD)No. 23556 of 2015*** is filed by the Management challenging the award dated 25.02.2014 of the 1st respondent passed in I.D.No.67 of 2002.

2. Heard M/s.D.Sivaraman, the Learned Standing Counsel for the petitioner and Mr.T.Lenin Kumar, the Learned Counsel for the 2nd respondent and perused the material documents available on records.

3. The 2nd respondent has joined service in the petitioner's Corporation on 28.11.1980. He was working as Head Cashier in Rock Fort Branch No. I. On 28.11.2000. A charge memo was issued and the same is extracted here under:

“That when he was working as Head Cashier in Rock Fort Branch No.1, during the period from 01.01.2000 to 09.11.2000 has misappropriated the Corporation money of Rs.7,280/-by making corrections and adding bus numbers falsely in vouchers and by preparing vouchers without authorization of the Branch Manager



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for disbursing bus under chase cleaning charges which is a misconduct under Clause 23(4) and 40(A) of the Standing Orders applicable to the Corporation.”

4. In the enquiry, the charges were held to be proved and after considering the past conduct of the 2nd respondent, who had suffered 8 punishments in his service including the punishment of increment cut for two years with cumulative effect for the misconduct of misappropriation, has imposed the present punishment of dismissal from service. In the earlier allegation of misappropriation, even though the petitioner corporation has imposed lenient punishment, the 2nd respondent has not corrected himself. Therefore, in the present charge, the petitioner Corporation has decided to impose punishment of dismissal from service. Hence, second Show Cause Notice was issued to the 2nd respondent, calling for his explanation for the proposed punishment of dismissal from service. After receiving the explanation, the respondents have passed final order on 17.07.2001, by imposing the punishment of dismissal from service.



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5. Challenging the same, the 2nd respondent has raised Industrial Dispute before the 1st respondent in I.D.No.67 of 2002. The 1st respondent, vide order, dated 25.02.2014, held that the management has not proved the charges and directed the management to pay the retirement benefits to the 2nd respondent. Since by the time, the 2nd respondent has attained superannuation on 31.01.2007, the Labour Court granted continuity of service, but without back wages. Aggrieved same, the present writ petition is filed.

6. The contention of the petitioner management is that the Tribunal can invoke Section 11(A) of the Industrial Disputes Act, 1947 only when the Tribunal comes to a conclusion that the charges are proved but the punishment is disproportionate to the proved charges. Hence the Tribunal has no power to interfere with the punishment and the 1st respondent has no jurisdiction to render a finding that the punishment was disproportionate.

7. The contention of the 2nd respondent is that the Corporation had not produced all the 194 vouchers which the management is relying on, but has



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produced only 106 vouchers. The Tribunal had taken this fact in consideration and has interfered with the punishment. However, the contention of the management is that on perusal of the 106 vouchers, it would be clear that the 2nd respondent has committed misappropriation and hence it is not necessary to produce the entire 194 vouchers to prove the charges. However, the 2nd respondent has submitted that the management is bound to produce the alleged 194 vouchers to prove the allegation. This Court is of the considered opinion that as far as the allegation of misappropriation is concerned even if one voucher is proved then the punishment may be imposed. Then if misappropriation is proved through 106 vouchers, then the punishment of dismissal may not be disproportionate. Hence the contention of the 2nd respondent is erroneous.

8. The next contention of the 2nd respondent is that the 2nd respondent was on leave for 77 ½ days during 01.01.2000 and 09.11.2000 and hence the entire liability cannot be fastened on the second respondent. But this contention was refuted by the management stating that it is not the case of the 2nd respondent that the entire misappropriation was committed only when he was on leave. On hearing the rival submissions, this Court is of the considered opinion that during



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the 2nd respondent was on leave, another person had served during the said period and the management is discriminatory in taking action against the erring persons.

9. It is seen that pending the industrial dispute, the 2nd respondent has attained superannuation. The 2nd respondent had served more than 21 years. Therefore, this Court is inclined to modify the punishment of dismissal as compulsory retirement and the date of dismissal would be the date of compulsory retirement. The 2nd respondent is entitled to terminal benefits, by calculating his service from 28.11.1980 to 17.07.2001. The said terminal benefits shall be calculated and disburse to the 2nd respondent. As far as the pension is concerned the said amount shall be deposited in the Pension Trust and the 2nd respondent is entitled to pension from that amount alone.

10. *CONT.P(MD)No.1009 of 2022*, was filed alleging disobedience of the order of this Court passed in M.P.(MD)No.1 of 2015 in W.P.(MD)No.23556 of 2015, dated 04.01.2016. In the said miscellaneous petition this Court has directed the petitioner Corporation to pay provisional pension to the 2nd respondent, from the date of filing of the writ petition.



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11. It is seen that the writ petition was filed in the year 2015. By the time, the 2nd respondent has already attained superannuation on 31.01.2007 itself. Therefore, the 2nd respondent is not entitled to provision pension. Since this Court is passing final order in the main petition, this Court is not inclined to entertain this contempt petition. Hence, this Contempt Petition is closed.

12. With these observations, ***W.P(MD)No.23556 of 2015***, is disposed of and the Cont.P(MD)No.1009 of 2022 is closed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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To

The Presiding Officer,
Labour Court,
Tiruchirapalli.



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S.SRIMATHY, J

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**Common Order made in
W.P.(MD)No.23556 of 2015and
CONT.P(MD)No.1009 of 2022**

28.02.2023