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W.A.No.151 of 2024

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                      |            |
|----------------------|------------|
| <b>Reserved on</b>   | 11.11.2024 |
| <b>Pronounced on</b> | 19.11.2024 |

CORAM :

THE HONOURABLE Mr.JUSTICE **R.SUBRAMANIAN**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN****W.A.No.151 of 2024****and****C.M.P. No.904 of 2024**

The Management,  
Tamil Nadu State Transport Corporation (Salem) Limited,  
Dharmapuri Division,  
Rep. by its Assistant Manager (Legal),  
Dharmapuri.

... Appellant

Vs.

1. The Presiding Officer,  
Labour Court,  
Salem.

2. L.Mani

... Respondents

**Prayer:** Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 22.08.2019 made in W.P.No.34272 of 2013 passed by this Court.



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For Appellant : Mr. M.Aswin

For Respondents : Labour Court (for R1)

Mr. K.Nagarajan (for R2)

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## **J U D G M E N T**

**C.KUMARAPPAN, J.**

Assailing the order of the learned Single Judge in W.P. No. 34272 of 2013, the instant Writ Appeal has been filed by the Management.

2. The brief facts, which give rise to the instant Writ Appeal are that, the second respondent herein, who was a Conductor, was served with a charge memorandum dated 10.04.2006, for the alleged misconduct of re-issuance of sold tickets, and for possession of an excess sum of Rs. 315/- in his cash bag. The management, on conclusion of the enquiry, found that the charges framed against the second respondent were proved, and ultimately ordered his termination vide order dated 07.09.2006.

3. In pursuance thereof, the second respondent raised an Industrial



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dispute before the Labour Court, Salem in I.D.P.No.20 of 2007. The Labour Court, after appreciating the law and evidence, found that the charge of re-issuance of the tickets could not be established, as the punching of tickets probabalize the impossibility of re-issuance. The Labour Court further held that the charge, would have been framed based upon the inadvertent defective entry in the invoice copy. The Labour Court also held that, the possession of Rs. 315/- cannot be considered as misappropriated amount, as even according to the appellant, the second respondent had reissued two rupees tickets, to 26 persons and collected only Rs. 52/-. Further, the Labour Court took cognizance of the fact that, on the date of the surprise check, the appellant had paid overtime wages and batta to the second respondent, and that there was every possibility that the excess amount, would belong to him. Consequently, the Labour Court set aside the order of termination and directed the appellant to reinstate the petitioner without back wages, but with continuity of service.

4. Assailing the said order, the appellant preferred the impugned Writ Petition, wherein, the learned Single Judge found no perversity in the Labour Court's order, eventually dismissed the Writ Petition. Not satisfied with the



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order of the learned Single Judge, the Management has preferred the instant Writ Appeal.

5. Heard Mr. M. Aswin, the learned Counsel appearing on behalf of the Management, and Mr. K.Nagarajan, learned counsel for the second respondent.

6. Mr. M.Aswin, learned counsel for the petitioner would vehemently contend that the Labour Court, as well as the learned Single Judge, failed to take cognizance of the second respondent's previous conduct, and the gravity of the charges. He would further contend that, the non-examination of the passengers to whom the sold tickets were re-issued, cannot be put against the Management, as those passengers had given signed complaints to the Management's witness, and in view of the same, the non examination of those passengers will in no way cause any dent in the Management's case. He would further contend that the records of the checking Inspector was proved through the Management's witness. It is in this background, he would submit that the finding of the Labour Court is perverse.



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7. Contending contra, Mr. K. Nagarajan, learned counsel for the second respondent, would contend that the Labour Court, after thorough appreciation of the evidence, found that the charge of re-issuance of sold ticket has not been established, as the punching of the alleged resold tickets indicates the impossibility of such re-issuance. He would further contend that the Labour Court has also found that those tickets could not have been issued prior to the inspection, and the issue could have arisen on account of defective entry made in the invoice copy. It is his further submission that such factual findings of the Labour Court could not be interfered with under Writ jurisdiction, unless such findings are perverse.

7.1. Mr. K. Nagarajan further contended that the availability of the excess amount of Rs. 315/- was also justified, as the second respondent was provided with batta and overtime charges in the date of inspection. In view of the above, he would contend that, the finding given by the Labour Court is a plausible one, hence, he prayed to dismiss the instant Writ Appeal.

8. We have given our anxious consideration to the submissions made



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on either side.

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9. Before we delve into the merits of the matter, we would like to refer few precedents so as to restate extent of power of this Court in a judicial review, with lucidity.

10. In ***B.C.Chaturvedi Vs. Union of India*** reported in (1995) 6 SCC 749, the Hon'ble Supreme Court has held as follows. The relevant paragraphs are paragraphs 12 & 18 and the same read as follows:-

***“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is***



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entitled to hold that the delinquent officer is guilty of the charge. **The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.**

13. ....

14. ....

15. ....

16. ....

17. ....

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. **The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the**



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*penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.*

*(Emphasis supplied by this Court)*

11. In *Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava* reported in (2021) 2 SCC 612, the Hon'ble Supreme Court held that if the decision is against the natural justice, then the same can be interfered. The relevant paragraphs are paragraphs 25 & 29 and the same read as follows:-

*“25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the Rules of natural justice or in violation of the statutory Rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*

*26. ....*



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27. ....

28. ....

29. *The Constitutional Court while exercising its jurisdiction of judicial review Under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."*

Through the above judgments, the following principles emerge:-

(i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment and the compliance of natural justice.

(ii) The power of judicial review is not like a appellate remedy to substitute its own finding, unless the findings of the Original Authority and Appellate Authority is perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless the same is shockingly disproportionate.

(iv) The mere possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary



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Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.

(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the original authority, the same has to be sustained.

12. Let us proceed to analyse the instant appeal with the touchstone of the above legal principle. In the case in hand, the Labour Court, on re-appreciation of the evidence, more specifically on the nature of punching of the disputed tickets, on the right side, arrived at conclusion that those tickets were issued at the first instance. This finding, according to us is a plausible finding, arrived at based on the evidence available on record.

13. In respect of the possession of the excess amount of Rs. 315/-, the Management witness admitted that on the date of inspection, the petitioner was provided with batta and overtime wages. Therefore, the excess amount could not be construed as a misappropriated amount. Furthermore, even according to the appellant, it is not their case that the excess of Rs. 315/-



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constitutes a misappropriation. It is in this background, we are of the firm view that the excess amount of Rs. 315/- has been accounted by the second respondent. This is, again, a plausible finding based upon the available materials. Accordingly, the order of the Labour Court does not suffer any perversity. The learned Single Judge has also considered the above aspect and has rightly dismissed the Writ Petition. In such view of the matter, we do not find any merits to entertain this Writ Appeal.

14. In the result, this Writ Appeal stands dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

[R.S.M., J.] [C.K., J.]  
19.11.2024

kv

Index : Yes/No  
Speaking order /Non Speaking Order  
Neutral Citation : Yes/No

To



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The Presiding Officer,  
Labour Court,  
Salem.



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**R.SUBRAMANIAN, J.**  
**and**  
**C.KUMARAPPAN, J.**

kv

Judgement in  
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