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W.P.No.7300 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2024

C O R A M

THE HONOURABLE Dr. JUSTICE D.NAGARJUN

Writ Petition No.7300 of 2022

and

WMP.No.7339 of 2022

The Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Rep., by its General Manager,
Mr.S.Natarajan,S/o, Sengodar,
Vellore Region,Vellore.

... Petitioner

Versus

1. A.Ashok Kuma
2. The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari calling for the records from the Special Deputy Commissioner of Labour- Chennai and quash the Approval Petition order dated 09.08.2021 in A.P.No.87 of 2010 and I.A.No.8 of 2019 passed by the 2nd respondent.

For petitioner

... Mr.M.Aswin

For Respondents

... Mr.S.T.Varadaajulu for R.1

... Mr.K.Tamilvendhan

Government Advocate for R.2



W.P.No.7300 of 2022

WEB COPY

ORDER

This Writ Petition is filed by the Tamil Nadu State Transport Corporation seeking to issue writ of certiorari to call for the order dated 09.08.2021 in Approval Petition No. 87 of 2010 and I.A.No.8 of 2019 passed by the second respondent in favour of the first respondent.

2. The facts in brief as per the records are that the first respondent was employed as Conductor in the petitioner's Tamil Nadu State Transport Corporation (Villupuram), in the year 2019. He was working in Vellore region. On 28.08.2007, while issuing ticket in Route No.528/D in Bus No. TN-23-N-1812 from Chennai to Thirupattur Route around 08.15 Hrs, Ticket checker entered the bus to check the tickets from the passengers. While checking the ticket checker found that Mr.Srinivasan passenger was travelling without ticket. On enquiry by the ticket checker, the passenger has informed that he gave Rs.100/- to the Conductor for travelling from Vellore Bus Stop to Ambur Bus Stop and the Conductor returned him Rs.85.50/- and not issued ticket to the passenger, thereby, it is found by Ticket Checker that the petitioner has misappropriated an amount of Rs.14.50/- without giving ticket to the passenger.



W.P.No.7300 of 2022

WEB COPY

3. Further the ticket checker while checking the sold tickets and tallying the money which the Conductor was holding, it was found that an amount of Rs.30.50/- was deficient.

4. The Corporation has received a letter dated 28.08.2007 from Ticket Checker to take action against the petitioner. Subsequent to receiving of the report from the Ticket Checker, the petitioner was placed under suspension on 01.09.2007 and charge memo was also issued on the very same day. The petitioner has submitted an explanation dated 13.09.2007. Subsequently, the suspension was revoked on 29.09.2007. Detailed enquiry was conducted by the petitioner corporation and on submission of enquiry report explanation was sought for from the petitioner as to why he cannot be removed from service. Reply was submitted by the petitioner and the department has finally concluded to remove the petitioner from service. Accordingly, proceedings were issued on 16.07.2010. Subsequently Approval Petition was filed and on considering the rival contentions, the second respondent has rejected the Approval Petition and aggrieved by the same, the present Writ Petition is filed by the Corporation.



W.P.No.7300 of 2022

WEB COPY

5. It is submitted by the learned counsel for the petitioner that the impugned orders passed by the second respondent authority are totally perverse and therefore, sought for setting aside the same. On the other hand, learned counsel for the respondent has submitted that impugned order are well reasoned order and therefore, the orders cannot be set aside.

6. The Second respondent authority have formulated 5 aspects for consideration as per the judgment of the Hon'ble Supreme Court of India in ***Lalla Ram vs. D.C.M. Chemical Works***, reported in A.I.R. 1978 (S.C) 1004. The Hon'be Apex Court has observed as under:

“12. The position that emerges from the above quoted decisions or this Court may be stated thus : In proceedings Under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has



been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and, the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co, v. Ram Probesh Singh MANU/SC/0136/1963 : (1963)ILL J291SC , Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [1961] 2 L.L.J. 511, Hind Construction & Engineering Co. Ltd. v. Their Workmen MANU/SC/0210/1964 , Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd." v. Management and Ors. MANU/SC/0305/1973 : (1973)ILL J278SC ., and Eastern Electric and Trading Co. v. Baldev Lal [1975] Lab. I.C. 1435 (S.C.) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or



WEB COPY



W.P.No.7300 of 2022

adequacy of the punishment or whether excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay Wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant: the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on Its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the



W.P.No.7300 of 2022

order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”

7. On a perusal of the impugned order it is observed by the second respondent that the enquiry was conducted by providing sufficient opportunities to cross examine the petitioner and Management witnesses and at the same time in the next sentence, it is mentioned in the order that on account of the above facts, it cannot be determined whether the petitioner corporation has conducted the enquiry on the charges levelled against the first respondent by following standing orders and by following principles of natural justices.

8. These two sentences referred above are quiet contrary to each other. On one hand, the second respondent has mentioned that enquiry was conducted by giving opportunities to the workmen and on the other hand, it was mentioned that principles of natural justice have not been followed. The rest of the discussions in the impugned orders the second



W.P.No.7300 of 2022

respondent tried to consider whether principles of natural justice have been followed. However there is no comment or observation in respect of following of principles of natural justice while conducting an enquiry. Therefore this part of the order is nothing but perverse.

9. Similarly, while discussing as to whether there was *prima facie* material available for imposition of punishment. While commenting on the evidence, the second respondent has observed in the impugned order that the management witnesses have given evidence about misappropriation of amount by the petitioner by at the same time it is observed that it is unable to decide as to whether departmental enquiry was conducted and proved with the lawful evidence. It is not clear as to what the second respondent mean. On the other hand it it observed that the evidence available would demonstrate that misappropriation of Rs.14.50/- was committed on the other hand second respondent has observes that enquiry was conducted without letting the evidence of the co-passengers. Therefore, with this kind of appreciation of evidence is not safe to jump into the conclusion in respect of the enquiry report.

10. In view of the above, the impugned orders are totally perverse,



W.P.No.7300 of 2022

basing on said orders, this Court cannot decide the fate of workmen. In view of the above while setting aside the impugned order the matter will have to be remanded back to the second respondent for fresh disposal to give a clear finding in respect the Approval Petition.

11. In result, the Writ Petition is allowed and the impugned orders are set aside and the matter is remanded back to the second respondent for fresh enquiry and the second respondent is directed to dispose of the same by giving findings in respect of all the aspects connected to it. No costs. Consequently, connected miscellaneous petition is closed.

21.06.2024

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.



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W.P.No.7300 of 2022

Dr.D.NAGARJUN, J.

jai

W.P.No.7300 of 2022



WEB COPY



W.P.No.7300 of 2022

21.06.2024