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W.P.No.19700 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 01.11.2023

ORDER PRONOUNCED ON : 29.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.19700 of 2010

The Management,
Tamil Nadu State Transport Corporation,
(Villupuram Division – II) Ltd.,
Vellore Region, Rangapuram,
Vellore – 632 009,
Rep. by its General Manager.

... Petitioner

VS.

1.The Presiding Officer,
Labour Court,
Vellore.

2.Thiru.G.Venkatesan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records concerning with I.D.No.86 of 2003 dated 06.01.2010 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.M.Aswin

For R1 : Court



W.P.No.19700 of 2010

For R2 : Mr.R.Rajaram

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ORDER

This Writ Petition is filed to call for the records concerning with I.D.No.86 of 2003 dated 06.01.2010 on the file of the 1st respondent and quash the same.

2.The Management Transport Corporation will be referred to as the petitioner and the second respondent workman will be referred to as the respondent.

3.The respondent was appointed as a conductor in the petitioner Corporation in the year April, 1995. While the respondent was on duty in bus route No.465 A on 30.09.1998, there was a surprise inspection by the Checking Inspector at 04.15 p.m. The Checking Inspector found that the respondent had misappropriated Rs.86/- and there was also a shortage of Rs.75.75 in his cash bag. The respondent was therefore issued with a charge memo dated 30.10.1998 for misconduct of misappropriation and shortage of cash. The respondent submitted his reply to the charge memo denying the charges. The petitioner thereafter conducted a domestic enquiry and the enquiry officer in his report dated 13.04.1999 held that the charges were proved. Based on the enquiry report, the second show cause notice was issued to the respondent along with



W.P.No.19700 of 2010

the enquiry report on 17.04.1999, calling for his explanation for the same. The respondent submitted a representation on 27.04.1999 seeking time to file his reply.

As the respondent did not furnish his reply till 17.05.1999, the petitioner passed the termination order vide the memo dated 17.05.1999. The respondent challenged the said termination order by raising a dispute which was numbered as I.D.No.86 of 2003. The Labour Court on an appreciation of the entire evidence on record found that the petitioner (Management) had failed to prove its case. The Labour Court found that the failure to examine the passengers who travelled in the bus without valid tickets was fatal to the petitioner's case. The Labour Court therefore concluded that the enquiry was not conducted fairly and properly and set aside the termination order. The Labour Court consequentially ordered the petitioner to reinstate the respondent with continuity of service but without any backwages. Aggrieved by the award of the Labour Court the petitioner has filed the above writ petition.

4.The learned counsel appearing for the petitioner submitted that the award of the Labour Court was very cryptic and the finding of the Labour Court that the enquiry proceedings were invalid was erroneous and unsustainable. The learned counsel submitted that the Labour Court failed to note that the strict rules of evidence were not applicable to domestic enquiries and so the failure to examine the passengers



W.P.No.19700 of 2010

could not be a ground to interfere with the disciplinary proceedings. The learned counsel further submitted that the respondent was charged with serious misconduct of misappropriation of funds, which was proved in the enquiry proceedings and therefore, the Labour Court ought not to have interfered with the termination order in such cavalier manner. The learned counsel therefore submitted that the award passed by the Labour Court was unsustainable and the same deserved to be set aside.

5.The learned counsel appearing for the respondent on the other hand submitted that the Labour Court appreciated the evidence in proper perspective and rightly concluded that the domestic enquiry was not properly conducted. The learned counsel further submitted that in any event, the petitioner having failed to examine the passengers who travelled in the bus without valid tickets could not rely on the mere statements of the Checking Inspector and the hear say evidence of one of the passengers for imposing the punishment of termination from service against the respondent.

6.I have heard both the learned counsels and I have perused the materials on record.

7.It is seen that the respondent was employed as a conductor in the petitioner



W.P.No.19700 of 2010

Transport corporation. While he was working on duty in bus route No.465 A on

30.09.1998, there was a surprise inspection by the Checking Squad at 04.15 p.m. The

Checking Inspector found that the petitioner had collected a fare of Rs.16 per passenger from a group of 8 passengers, who boarded the bus in Vellore which was

proceeding to Thirupattur. The Checking Inspector found that out of the 8 tickets 2 tickets related to the trip and the remaining 6 tickets related to the previous trip. It

was therefore found that the Conductor had misappropriated a sum of Rs.96/- being the fare for the 6 passengers. The Checking Inspector further found that there was a

shortage of Rs.75.75/- in the cash bag of the respondent. The petitioner therefore

issued a charge memo to the respondent on 30.10.1998. The respondent submitted his

reply to the charge memo on 05.12.1998 and as the same was found to be unsatisfactory, a domestic enquiry was conducted. In the enquiry proceedings, the

respondent examined himself and on the behalf of the petitioner, the Checking

Inspectors were examined and documents 1 to 8 were marked. The respondent cross

examined the petitioner's witnesses in the domestic enquiry and thereafter a detailed

order was passed by the enquiry officer. In pursuance of the enquiry report and after

following due procedure, the respondent was terminated from service. The

respondent challenged the termination order in the ID which was allowed by the

Labour Court and hence the petitioner has filed the above writ petition challenging



the same. The Labour Court without any reasoning held that the enquiry proceedings were not conducted fairly and properly. The entire award of the Labour Court is very cryptic in nature and therefore on the short ground the case could be remanded to the Labour Court for fresh consideration. But considering the fact that the matter has been pending before this Court for the past 13 years, I am of the view that it would be unjust to remand the matter to the Labour Court at this length of time. I therefore, called upon the learned counsels to produce the enquiry proceedings and other relevant documents, so that the same could be appreciated by this Court so as to give a quietus to the matter.

8.It is seen that the respondent was appointed as a conductor in the petitioner's Corporation in April, 1995. For the misconduct of misappropriation of funds two charges were framed against the respondent which are as follows:

“1.On 30.09.1998, when he was on duty in Bus No.TN23N1142, Route No.465/A from Vellore to Tiruppathur, he had collected fare Rs.16.00 x 8 = Rs.128/- from a group of eight passengers and issued two tickets bearing Nos.HB-02-46848 and HB-02-47105 related to that trip and issued six tickets bearing Nos.HB-02-46481 to 46846 which were related to



W.P.No.19700 of 2010

previous trip and thereby misappropriated a sum of (Rs.16.00 x

WEB COPY 6) Rs.96/-.

*2.While checking in the cash bag, he kept a shortage of
Rs.75.75 in the collection.”*

9.It is seen that the enquiry officer based on the inconsistencies and contradictions in the explanation given by the respondent to the Checking Inspector in the show cause notice and in the enquiry proceedings and the fact that the previous trips tickets were recovered from the passengers by the respondent were not seriatim, though it was admitted that they travelled as a group concluded that the first charge was proved. I find force in the submission of the learned counsel for the respondent that the reliance placed by the enquiry officer on the inconsistencies and contradictions of the respondent's statement can not be a ground for holding that the charges were proved. As rightly contended by the learned counsel for the respondent, the petitioner's witness admitted that on verification of the trip sheet it was found that the number of passengers who travelled in the bus and the number of tickets given tallied with the trip sheet.

It was the specific stand of the respondent that he had issued the tickets HB-02-47101 to HB-02-47104 and HB-02-47106 and HB-02-47107 to 6 passengers. It was elicited in the cross examination of the



Checking Inspector that the aforesaid 6 tickets were not found with any of the passengers. Therefore, the contention of the respondent that the logical conclusion would only be that the 6 passengers misplaced the tickets and because of their inability to produce the same they produced the old tickets cannot be brushed aside. The burden to prove the charges is on the petitioner. When the trip sheet tallies with the number of tickets issued to the passengers, it is for the petitioner to explain what happened to the missing tickets. Admittedly the number of tickets sold tallied with the number of passengers who travelled. Therefore, as rightly contended by the learned counsel for the respondent the only inference that can be drawn is that the 6 passengers misplaced the tickets in order to avoid fine and therefore, I find that the first charge is not proved.

10.As far as the second charge is concerned the explanation given by the respondent to the show cause notice dated 05.12.1998 is that due to illness inadvertently he paid excess change. The enquiry officer finding that the explanation of the respondent to the 2nd charge to be unreasonable and illogical and in the light of the admission of the respondent on the shortage of funds of Rs.75.75/- concluded that the 2nd charge was proved. In my view this is a fit case for applying the principles of res ipsa loquitur (Thing itself speaks). The shortage of Rs.75.75/- is admitted by the



W.P.No.19700 of 2010

respondent in cross examination. The explanation for the same is absurd, illogical and unbelievable. The shortage of funds which is undisputed is either due to a dishonest act or due to gross negligence. It is also pertinent to note here that the respondent has not whispered about the 2nd charge in his counter to the writ petition. When the shortage is admitted and the explanation given is found to be unbelievable, the only conclusion that can be drawn is that the second charge is proved.

11. On the quantum of punishment, I am of the view that the misappropriation of funds is a serious misconduct. While imposing the punishment, the loss of confidence of the employer is paramount consideration and not the quantum of money misappropriated. Further merely on the ground of sympathy or generosity, the quantum of punishment imposed by the Management cannot be interfered with when the employee is found guilty of misappropriation of funds. I am fortified in my view by the Judgment of the Hon'ble Supreme Court in the case of ***Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane*** reported in ***2005 (3) SCC 254***, I am therefore of the view that the punishment imposed by the Management should not be interfered with. In the light of the admission of the respondent on the shortage of Rs.75.75 and in the absence of any plausible explanation for the same, I hold that the termination of service is justified.



W.P.No.19700 of 2010

12. Accordingly, the writ petition is allowed. Consequently, the award dated 06.01.2010 passed by the Labour Court in I.D.No.86 of 2003 is set aside. There shall be no order as to cost.

29.01.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order

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To

1. The Presiding Officer,
Labour Court,
Vellore.

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram Division – II) Ltd.,
Vellore Region, Rangapuram,
Vellore – 632 009.



WEB COPY



W.P.No.19700 of 2010

N.MALA, J.

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W.P.No.19700 of 2010

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