



W.A.No.631 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 04.04.2024

Delivered on: 29.04.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A.No.631 of 2024

and

W.M.P.No.4453 of 2024

K.R.Krishnamoorthy

... Petitioner

vs.

1.The Management,
Tamil Nadu State Transport Corporation (Villupuram) Limited,
Represented by its General Manager,
Villupuram Region,
Villupuram – 605 602.

2.The Special Joint Commissioner of Labour,
Chennai – 600 006.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patents to set aside the order dated 17.11.2023 in W.P.No.32633 of 2018.

For Petitioners : Mr.T.Deeraj

For Respondents : Mrs.S.Pavithra [for R1]
: Mr.T.Chezhian
Additional Government Pleader



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[for R2]

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Writ appeal has been preferred as against the order passed in W.P. No.32633 of 2018 on the file of this Court dated 17.11.2023, wherein the 1st respondent herein had filed a Writ petition challenging the order passed the 2nd respondent / The Special Joint Commissioner of Labour dated 19.02.2018, wherein the Special Joint Commissioner of Labour has declined to grant permission for the dismissal of the employee under Section 33(2)(b) of Industrial Disputes Act. As against the said order, the 1st respondent herein has filed the Writ petition. The Writ petition was allowed by the Writ Court. As against the same, the present Writ appeal has been filed.

2. The short facts necessary to dispose the case can be stated as follows:-

The appellant was working under the 1st respondent's Transport Corporation and he was charged that when he was working as Conductor in the 1st respondent's Corporation, on 02.07.2012 after obtaining the ticket amount, he has not given tickets to the passengers and he found with an



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excess amount of Rs.100/- in his cash bag and therefore, he was suspended and thereafter a charge memo was served to him and he also filed his explanation and the department enquiry was conducted, but he has not participated in the department enquiry in spite of ample opportunities given to him. Therefore, the matter was decided exparte and the charges levllled against the appellant was proved and he was removed from service and the order was also served to him. Further, he was paid one full month salary through cheque and thereby, the 1st respondent filed an approval petition before the 2nd respondent / the Special Joint Commissioner of Labour, Chennai.

3. The learned Special Joint Commissioner of Labour, Chennai after scrutinizing the records presented by the Transport Corporation declined to grant permission on the ground that the appellant sought for assistance of Advocate to be engaged in the Disciplinary enquiry proceedings, but the same has not been communicated as to whether his request was accepted or not and thereafter, the enquiry proceedings was proceeded by setting him exparte and however, there is no prima facie case to impose punishment of dismissal from service and one full month salary fixed by the department is



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also not correct and the petition was also filed with delay of 6 days and therefore, permission was declined.

4. As against the order of the Special Joint Commissioner of Labour, Chennai, the Transport Corporation Management / 1st respondent herein has filed a Writ petition before this Court. The Writ Court allowed the writ petition by holding that Special Joint Commissioner of Labour failed to consider the antecedents and misappropriation done by the appellant and the appellant did not attend the enquiry proceedings as he was not given permission to engage a counsel and there is no deficit of Rs.490/- in the monthly salary. The increase of Dearness Allowance of 7% was only on 30.12.2014 and the employee was removed from service on 22.07.2014. Therefore, the Writ Court allowed the Writ petition and set aside the order passed by the Special Joint Commissioner of Labour, Chennai. Aggrieved by the said order, the employee has preferred this Writ appeal.

5. The learned counsel appearing for the appellant would contend that before enquiry proceedings, the appellant wanted to engage a Counsel and thereby he has filed a petition to seek permission for engaging an Advocate. In the said petition, the enquiry officer has not passed any order



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and the result of the petition as to whether he was permitted to engage an Advocate, has not been communicated to him and he was waited orders from the concerned disciplinary authority, but without serving any order as about the permission for engagement of an Advocate to defend the disciplinary proceedings, the disciplinary authority has passed orders without giving opportunity to the appellant. Therefore, natural justice has not been followed. Further, the Special Joint Commissioner of Labour, in the order, has categorically stated that the appellant wanted to engage a counsel and the same was rejected by the enquiry officer and the same was served to him through letter dated 23.10.2013, but the said letter has not been produced along with papers and further again, the delinquent filed a petition to engage a Counsel on 04.12.2013 and the same was also rejected since already his request was rejected and thereby the present request petition cannot be accepted and thereby, he was proceeded exparte and moreover, the department side has not examined any person, who travelled in the bus to prove that the ticket was not issued after getting ticket amount. Therefore, the appellant was not given proper opportunity to defend the proceedings. Therefore, natural justice was not followed and there is no prima facie evidence and also 7% of Dearness Allowance has



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not been calculated in the one month salary and by considering all the above facts, declined to grant permission. But the Writ Court, without considering the above said aspects and only based on the antecedents and the Dearness Allowance of 7% is subsequent to the date of passing order and set aside the order passed by the Special Joint Commissioner of Labour.

6. The learned counsel would further contend that the Writ Court failed to consider the dismissal order dated 22.07.2014 passed by the 1st respondent is unfair labour practice and intended to victimize the appellant. The Special Joint Commissioner of Labour, Chennai rightly refused to approve the order of dismissal due to non-observance of principles of natural justice and the Writ Court ought not to have interfered with the said findings. The Writ Court failed to consider that the request of the appellant for appointment of Advocate was not even considered by the enquiry officer and subsequently he was set exparte and the Writ Court also failed to consider that the appoval petition was filed after a delay of 6 days. Therefore, the order passed by the Writ Court is liable to be set aside by allowing this appeal.



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7. The learned counsel appearing for the respondents would contend that on 02.07.2012, while the appellant was on duty, he was found with an excess amount of Rs.100/- in the conductor's cash bag and he obtained money from the passengers without issuing tickerts to them. Therefore, he was suspended from service on 03.07.2012 and a charge memo was issued to him on 05.07.2012. Thereafter, suspension was revoked on 04.08.2012 and the department enquiry was conducted. The appellant did not participate in the enquiry proceedings even though ample opportunities were given to him. Thereafter, the department enquiry was proceeded in the absence of the appellant. The Disciplinary Authority passed order of dismissal from service, in the disciplinary proceedings. After completion of the departmental enquiry, a notice was served to the appellant on 04.03.2013 and he also sent his reply on 11.04.2014. As the explanation was not satisfactory, he was removed from service through final order dated 22.07.2014 and he was also paid one full month salary as per the provisions of Industrial Disputes Act. Thereafter, the respondents authorities have filed permission petition before the Special Joint Commissioner of Labour, Chennai by furnishing all the records, but the



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Special Joint Commissioner of Labour without following the procedures, has declined to grant permission and discussed the matter in depth as if the appellate authority / Special Joint Commissioner of Labour, has exceeded his limit in declining the permission. Therefore, the Writ Court after considering all these aspects, correctly set aside the order passed by the Joint Commissioner of Labour. Therefore, the present Writ appeal is liable to be dismissed.

8. Heard both sides'. Perused all the materials available on record.

9. In this case, according to the Transport Corporation Management/ 1st respondent, the appellant was charged for the delinquency that on 02.07.2012, while he was working as conductor, he has not issued tickets to the passengers after receiving ticket amount and an excess amount of Rs.100/- was found in his cash bag. Therefore, a Charge memo was served on him and thereafter explanation was also submitted by him and the departmental enquiry was conducted. While conducting departmental enquiry, the appellant sought for assistance of an Advocate and filed a petition before the Enquiry Officer for permitting him to engage a Counsel to conduct the enquiry proceedings. The said fact is admitted by the 1st



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respondent department. But according to the department, the said request was rejected and the same was communicated to the delinquent on 23.10.2013 and again, the delinquent filed another petition on 04.12.2013 and the same was also rejected by mentioning about the earlier rejection. The contention of the 1st respondent that the above said rejection order was served to the delinquent / appellant is denied by the appellant. While so, it is the duty of the department / 1st respondent to prove that the request of the appellant was declined and the same was communicated to the appellant. There is no record to show that the rejection order was communicated to the appellant. The so-called communication dated 23.10.2013 was also not produced before the Joint Commissioner of Labour, Chennai. Therefore, the department failed to prove that the request of the appellant for engaging a counsel was declined and the same was communicated to him. Thereafter, the enquiry officer has proceeded the case in the absence of the delinquent / appellant. Therefore, it is clear that sufficient opportunity was not given to the appellant and thereby failed to follow the principles of natural justice. The above said aspect has not been considered by the Writ Court while passing the order.



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10. Further the appellant, while working as Conductor on 02.07.2012 in the bus bearing Registration no.TN32 N 3490 from Tirupathi to Tiruvannamalai, he failed to issue ticket after collecting a sum of Rs.351/- (Rs.107/- x 3) from three persons and failed to return the balance amount of Rs.30/- and also failed to issue tickets for two persons after receipt of amount of Rs.214/-. Further he had excess amount of Rs.100/- in his cash bag. Once the department / transport corporation framed charges for the delinquency that the delinquent has not issued tickets and obtained money from the passengers, it is the duty of the department to examine the persons from whom, the delinquent collected money and not issued tickets has to be proved.

11. In this case, as per the charge, the delinquent collected money of Rs.351/- from three persons and failed to issue tickets and to return the balance amount of Rs.30/-. Again the delinquent collected Rs.214/- from two persons for the ticket amount to travel from Tirupathi to Tiruvannamalai and failed to issue tickets to them, but the amount of Rs.100/- was only found in excess in the conductor's cash bag. If so, what about the above said amount obtained from the passengers for 5 tickets and



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the balance amount of Rs.30/- also has to be explained by the 1st respondent Corporation. Whether the amount was with the appellant or not? In that aspect, it is silent.

12. The above said aspect has also not been considered by the Writ Court and the Writ Court only based on the antecedents of the appellant and considering that the amount was misappropriated and the appellant is the habitant of misappropriating money and as the opportunity was granted to the appellant by the department, he did not appear and thereby, closed the enquiry by examining the witnesses and passed order, the above said observations of the Writ Court are unsustainable. The Writ Court failed to consider that opportunity was not given to the delinquent to engage a counsel and the same is also not communicated to him and failed to consider that there is no any evidence in respect of misappropriation of the amount collected from the passengers without issuing tickets and failed to consider none of the passengers, against whom the tickets were not issued, have been examined. Therefore, the order passed by the Special Joint Commissioner of Labour, Chennai declining to give permission is in order and the order passed by the Writ Court is unsustainable and the same is liable to be set aside.



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13. In the result, the Writ Appeal is allowed and the order dated 17.11.2023 in W.P.No.32633 of 2018 passed by the Writ Court is set aside and Writ petition is dismissed. The order passed by the Special Joint Commissioner of Labour, Chennai dated 19.02.2018 in A.P. No.178 of 2014 is restored. No costs. The connected miscellaneous petition is closed.

(J.N.B.J.) & (P.D.B.J)
29.04.2024

mjs

Internet : Yes

Index:Yes/No

Neutral Citation:Yes/No

To

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Represented by its General Manager,
Villupuram Region,
Villupuram – 605 602.

2.The Special Joint Commissioner of Labour,
Chennai – 600 006.



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J.NISHA BANU,J
and
P.DHANABAL,J

(mjs)

Pre-delivery judgment in
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