



W.A.No.1535 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE P.DHANABAL**

**W.A.No.1535 of 2022
and
C.M.P.No.10171 of 2022**

The Management,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
27, Pugaivandi Nillai New Salai,
Kumbakonam - 612 001
rep. by its General Manager

... Appellant

Vs.

1. The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai.

2. V.Sarnathan,
Conductor 92 C.R.1010,
Tanjore Suburban Branch,
No.18/1347, Periya Pualalu Street,
Mela street,
Tanjavur.

...Respondents

Writ Appeal filed under Clause 15 of the Letters patent against the
order passed by this Court in W.P.No.32770 of 2015 dated 30.07.2021.



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For Appellant : Mr.C.Senapathi

For Respondents : R1-Court
Mr.Ajay Khose for R2

J U D G M E N T

(The judgment of the Court was delivered by J.Nisha Banu,J.)

This Writ Appeal has been filed challenging the order passed by the learned Single Judge made in W.P.No.32770 of 2015 dated 30.07.2021, by which, the order of dismissal passed by the Management was refused to be approved.

2. The case of the appellant is that the 2nd respondent was appointed as a Conductor. On 08.05.2008, the 2nd respondent was assigned duty in bus bearing No.TN 49 N 166 in the route No.454G. The inspection team found that the 2nd respondent has misappropriated a sum of Rs.29.00 by non-issuing tickets to two passengers at a denomination of Rs.14.50. Further, on inspecting the cash bag of the 2nd respondent, it was found that there was cash deficit of Rs.69.50/-. Hence, the appellant Corporation issued a charge memo dated 28.08.2008 to the 2nd respondent and conducted disciplinary proceedings. As the charges were proved against the 2nd respondent in the enquiry, he was dismissed from service by the Corporation. The appellant Corporation filed a petition before the 1st respondent to get approval of the dismissal. The 1st



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respondent has dismissed the approval petition. Challenging the same, the appellant Corporation filed a writ petition before this Court and the learned single Judge has also dismissed the writ petition. Aggrieved by which, the present appeal has been filed.

3.(i) Learned counsel for the appellant would state that the learned single Judge failed to see that the 1st respondent cannot re-appreciate the evidence in the approval petition under section 33(2)(b) of the Industrial Disputes Act, 1947. The 1st respondent, while dealing with the approval petition substituted his own view that the dismissal order deserves to be set aside on the ground that the specific witness needs to be examined. It is not the duty of the 1st respondent to go into the merits of the case.

(ii) Learned counsel for the appellant would further state that sufficient opportunity was given to the 2nd respondent to participate in the disciplinary enquiry and he effectively participated in the enquiry. However, the Authority/1st respondent, without considering the same came to a wrong conclusion that the appellant Corporation did not follow the principles of natural justice.

(iii) Learned counsel would further submit that once the domestic enquiry is found to be vitiated, the authority must have given an



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opportunity to the employer to establish the charges before him. But the 1st respondent, without giving any opportunity to the appellant to let in evidence, has dismissed the approval petition. Hence, the same is perverse.

(iv) Learned counsel would further submit that the Corporation has sent one month salary as well as Form T to the 2nd respondent and had also filed the approval petition in A.P.No.495 of 2011 without any delay. The order passed by the learned single Judge is illegal and erroneous and hence, the order passed by the learned single Judge confirming the order passed by the 1st respondent, rejecting the approval petition, has to be set aside and the writ appeal may be allowed.

4. (i) Per contra, the learned counsel appearing for the 2nd respondent would state that there is no perversity or illegality in the order passed by the learned single judge confirming the order of the Labour Commissioner.

(ii) Learned counsel would further submit that the main allegation against the 2nd respondent is that while the 2nd respondent was working as a conductor, he had received Rs.14.50 each from two passengers, totally Rs.29/- and did not give the tickets to them, thereby causing loss



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to the Management. However, the appellant Management did not take any efforts to summon the passengers for the domestic enquiry and examine them as witnesses in the domestic enquiry. The appellant Management did not give any opportunity to the 2nd respondent for cross examining them. Thus, the domestic enquiry was not conducted in a proper manner. He would further submit that the petitioner also retired from service. The order passed by the learned single judge confirming the order passed by the 1st respondent Commission need not be interfered with.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. It is not in dispute that the passengers from whom the amount was received and the travelling tickets were not issued, were not examined during the domestic enquiry. The appellant Management did not take any efforts to summon the passengers for the domestic enquiry and to examine them as witnesses. The 2nd respondent was not given an opportunity to examine them. Without examining them, the enquiry officer had given the findings only based on the evidence of the ticket examiners. Thus, the domestic enquiry cannot be considered to have



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been conducted by following the principles of natural justice. Thus, a prima facie case as against the 2nd respondent/employee has not been proved by the Management on the basis of admissible evidence. Therefore, we are of the view that the Authority/1st respondent is perfectly correct in rejecting the approval petition, which was confirmed by the learned single Judge and the same needs no interference by this Court.

7. In the result, the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
vsi

(J.N.B,J.) (P.D.B., J.)
01.04.2024

To
The Special Deputy Commissioner of
Labour (Conciliation),
DMS Compound,
Chennai.

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

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