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W.P.No.15316 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE N. MALA

W.P.No.15316 of 2019

and

W.M.P. No.15306 of 2019

The Management,
Metropolitan Transport Corporation (Chennai) Ltd., ... Petitioner

Vs.

M. Sivalingam,
Driver D12100. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to order dated 15.11.2018 passed in I.D. No.797 of 2015 on the file of III Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr. C. Gauthamaraj, Standing Counsel

For Respondent : Mr. S.T. Varadarajulu

ORDER

This Writ petition is filed by the Transport Corporation challenging the award dated 15.11.2018 passed in I.D. No.797 of 2015 by the learned III Additional Labour Court, Chennai.



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2. The petitioner herein is referred to as 'Corporation' and the respondents as the 'workman'.

3. The Corporation appointed the workman as 'driver' and on 05.06.2007, the workman was allotted with the duty of driving the bus bearing Registration No.PMH 857 in 54/L/B/service. While so, the workman stopped the bus near the Highway Hotel in the Poonamallee Highway and pilferaged 30 litres of diesel from the diesel tank and sold it in a mechanic shop. The Corporation issued a suspension memo dated 08.06.2007 followed by the charge memo on 14.06.2007. The workman replied to the charge memo on 09.07.2007 and thereafter a domestic enquiry was conducted. The Enquiry Officer submitted his report on 20.04.2010 holding all the charges against the workman were proved. Thereafter the Corporation, passed the dismissal order by considering the past service records of the workman which showed that he had caused two major accidents in the past, 4 minor accidents, one fatal accident, he was unauthorisedly absent on 8 occasions, he drove the vehicle on an unauthorized route twice, he had misbehaved with his superior, he caused tyre damage on 2 occasions and in addition to all the above, he was



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awarded punishments on 15 occasions. The workman raised a dispute which was registered in I.D. No.797 of 2015 in III Additional Labour Court. The Labour Court passed the impugned award setting aside the dismissal order dated 18.08.2010 and directing the Corporation to settle the attendant benefits alone if any, for the period from the date of his dismissal on 18.08.2010 to the date of his superannuation on 31.12.2014 excluding the period from 23.07.2013 to 02.04.2014 and from 29.11.2014 till 31.12.2014, with liberty to the Corporation to recover the value of the diesel misappropriated by the workman with interest. Aggrieved by the award passed by the Labour Court, the Corporation has filed the above Writ petition.

4. The learned counsel for the petitioner submitted that the Labour Court having found that the misconduct of misappropriation was proved, erred in interfering with the punishment imposed by the Corporation. The learned counsel submitted that the Labour Court failed to note that the Corporation imposed the punishment of dismissal from service by considering the past conduct and service records of the workman and hence the Labour Court ought not to have interfered with the same. According



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to the counsel, the Corporation had lost confidence in the workman and hence the punishment of dismissal was justified.

5. The learned counsel for the respondent submitted that the Labour Court rightly set aside the punishment of dismissal as it found that the misconduct of theft was not made out but only the misconduct of misappropriation was established. The learned counsel further submitted that even the finding on misappropriation was unsustainable as the Corporation failed to prove the shortage of diesel. The learned counsel also submitted that the Labour Court awarded the attendant benefits considering the service of the respondent for 29 years and therefore, this Court should not interfere with the same.

6. Heard both sides and perused the entire materials available on record.

7. Admittedly, the workman was a driver and one Santhalingam was the conductor of the bus bearing Registration No.PMH 857 on 05.06.2007. On that day, 140 litres of diesel was filled in the bus. The average



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consumption of diesel for the bus in the specific route concerned was 70 litres. On 05.06.2007, when the bus arrived at the depot after completing all the services, there was a reserve of only 40 litres in the diesel tank. The said aspect was deposed by the management witness in the domestic enquiry and the petitioner had not chosen to cross examine the witness on the same. It is seen that the workman tried to explain the shortage of diesel on the ground that the shortage could have been due to diesel leakage, engine raise and traffic disruptions. Even if it were so, the workman should have cross examined the management witness on this aspect during the domestic enquiry. The workman failed to cross examine the management witness on this aspect. Hence the Labour Court rightly held that the said reasons were nothing but an after-thought. Strangely the Labour Court though found that the misconduct of misappropriation was proved as there was admittedly shortage of fuel, found that the misconduct of theft was not proved, that too after observing that there was no difference between the act of theft and misappropriation and both remain in same platform. It is seen that the Labour Court did not consider the documents Ex.M.1 to Ex.M.6 filed by the Corporation. The Labour Court having recorded the marking of the said documents, failed to consider the same. That there was



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a total non-application of mind by the Labour Court to the documentary evidence filed by the Corporation is evident by the simple instance of not even mentioning the said documents in the list of documents in the Award. Be that as it may, the Labour Court having found that the misconduct of misappropriation was proved, in my view erred in overturning the dismissal order.

8. It is therefore to be seen if the Labour Court was justified in interfering with the punishment imposed by the Corporation. The Labour Court failed to appreciate that even in the dismissal order, the past record of the workman was cited and based on that, the dismissal order was passed. The Labour Court rejected the dismissal order simply on the ground that the workman had not indulged “in this kind of misappropriation before”. In my view, the reason is totally unacceptable and unreasonable.

9. It is trite in law that imposing of punishment is the prerogative of the Management. It is also settled that interference in the punishment imposed by the management would be justified only if it is found to be



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disproportionate to the proved misconduct. The Labour Court failed to note that the past record of the Workman did not inspire confidence in the management to continue his service. While so, the Labour Court ought not to have interfered with the dismissal order on mere misplaced sympathy. In this aspect, the judgment of the Hon'ble Supreme Court in *Divisional controller, KSRTC (NWKRTC) v. A.T. Mane reported in (2005) 3 Supreme Court Cases 254* can be usefully referred to. The Hon'ble High Court in **Para 12 & 13**, held as follows:-

“12. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.

13. This Court in the case of *B.S. Hullikatti* held in similar circumstances that the act was either dishonest or was so grossly negligent that the respondent therein was not fit to be retained as a conductor. It also held that in such cases there is no place for generosity or misplaced sympathy on the part of the judicial forums and thereby interfere with the quantum of punishment”



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I am therefore of the view that the Labour Court erred in interfering in the punishment imposed by the Corporation despite its own finding that the misconduct of misappropriation was proved.

10. In the light of the above discussions, the Writ petition is allowed. The Award dated 15.11.2018 passed in I.D. No.797 of 2015 on the file of III Additional Labour Court, Chennai is set aside. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

22.01.2024

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N. MALA.J.,

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