



W.P.No.22524 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

**W.P.No.22524 of 2021
and W.M.P.No.23745 of 2021**

The Managing Director,
Metropolitan Transport Corporation
Pallavan Illam, Anna Salai,
Chennai – 600 002.

..Petitioner

Vs.

The Secretary,
Government Transport Employees Union,
Regn. No.73/MTS, Attached to CITU,
Pallavan Salai, Kalaiaranga Valagam,
Chennai – 600 002.

..Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the order passed in I.D.No.178 of 2018 dated 26.09.2019 on the file of the Ist Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr. C.Gauthamaraj
Standing Counsel
For Respondent : Mr.S.T.Varadarajulu



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ORDER

This writ petition has been filed challenging the order passed in I.D.No.178 of 2018 dated 26.09.2019 on the file of the Ist Additional Labour Court, Chennai, by which, the punishment imposed on Mr.N.Manoharan was modified from the punishment of postponement of annual increment for two years with cumulative effect to postponement of annual increment for two years without cumulative effect.

2. The Transport Corporation will be referred to as petitioner, the Union as respondent and the workman as workman. The case of the petitioner is that the respondent raised a dispute on behalf of the workman, who was working as a bus conductor under the petitioner in Employment No.C-15536. On 27.12.2007, the said workman was on night duty, in bus route No.PP 19 Extn-F which was plying from Broadway to Kovalam and a checking was made on 21st stage of the bus. The Checking Inspector found that the workman had committed irregularity in issuing tickets. On 16.01.2008, the petitioner suspended the workman and on 08.02.2008, a charge memo was issued to the following effect:

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1. On 27.12.2007, when Manoharan attached with Central Depot worked as conductor in bus route No.PP1 Extn.F on night duty that there was a shortage of cash of Rs.92/- and he had violated Section 25 (Xii)(f) of the Certified Standing Order.

(ii). With an intention to re-sell the tickets particularly ticket value of Rs.10.50 and Rs.11/-, he punched the same on down side instead of upper side and the said action is violated under Section 25(Xii)(d) and 25 (Xxxix)(c) Certified Standing Order.

(iii). As per Section 25(Xiv) of the Certified Standing order the Conductor may not have retain more than Rs.10/- or may not have less than Rs.10/- and the conductor to be punched on the very same direction, whereas, the conductor who have less than Rs.92/- in his bag and he wrongly punched the ticket.



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3. While so, on 21.01.2008, the workman was asked to submit his explanation. Since the explanation was not satisfactory, a domestic enquiry was ordered and the same was held in fair and proper manner by following the principles of 'Natural Justice'. The Enquiry Officer submitted his report on 22.04.2010, holding that the charges were proved. In pursuance to the Enquiry Officer's report, the workman was asked to submit his explanation. Since there was no proper response from the said workman, the petitioner sent a second show cause notice on 06.08.2010, to which, he did not reply. Therefore, the Petitioner issued final order of punishment on 29.10.2010, postponing the annual increment for two years with a cumulative effect.

4. Aggrieved by the said order, the respondent-Union raised the industrial dispute in I.D.No.178 of 2018 on behalf of the workman, before the Ist Additional Labour Court. The petitioner did not file any document, but relied on the documents marked through the respondent-Union viz., Exhibts W1 to W8. The Labour Court, on appreciation of the evidence on record, found that the explanation given by the workman for the loss of deficit cash to



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the tune of Rs.92/-, was unacceptable. Though the Labour Court found that there was mis-conduct on the part of the workman, the Labour Court, nevertheless modified the punishment of postponment of annual increment for two years with cumulative effect into postponement of annual increment for two years without cumulative effect. The Labour Court further directed the petitioner to pay the back wages to the workman within a month, failing which, the petitioner had to pay interest at 8% p.a. Aggrieved by the order of the Labour Court, the petitioner filed the present writ petition.

5. Learned counsel appearing for the petitioner submitted that the Labour Court having found that the misappropriation of Rs.92/- was established erred in interfering with the quantum of punishment imposed by the petitioner.

6. Per contra, learned counsel appearing for the respondent submitted that the Labour Court erred in rejecting the explanation of the workman that the deficit in cash of Rs.92/- occurred due to the spillage of the bag. The counsel further submitted that the Labour Court having exercised its



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jurisdiction in fair and proper manner. The award deserved to be confirmed.

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7. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

8.I fully agree with petitioner's counsel that the Labour Court ought not to have interfered with the punishment imposed by the petitioner. The Labour Court having rejected the explanation of the workman that the deficit cash of Rs.92/- found with him was due to spillage of the bag and having also factually found that the misconduct of misappropriation was proved erred in interfering with the punishment. It has time and again been held by this Court as well as the Hon'ble Supreme Court that the amount misappropriated may be small or large but what is relevant is only the act of misappropriation. (*Ref. Rajasthan State Transport Corporation vs. Bajrang Lal*). It appears that the Labour Court has interfered with the punishment on mere sympathy. In my view, in cases of misappropriation, sympathy has no role. I am therefore of the view that the award of the Labour Court cannot be



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sustained and hence, it is set aside. As regards, the suspension period of 30 days is concerned, the Labour Court relied on the Standing Orders and had rightly held that the said period can be treated only as on-duty instead of leave, which holds good.

9. For the above reasons, this writ petition is allowed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

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msv
Index: Yes/No
Internet: Yes/No
Speaking order: Non-speaking order
To
The Secretary,
Government Transport Employees Union,
Regn. No.73/MTS, Attached to CITU,
Pallavan Salai, Kalaiaranga Valagam,
Chennai – 600 002.

N.MALA.J.,



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