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W.P.No.24619 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.24619 of 2019
and W.M.P.No.24276 of 2019

The Management,
Metropolitan Transport (Chennai) Corporation,
Pallavan Illam,
Anna Salai,
Chennai – 600 002. ... Petitioner

Vs.

Mr.D.Jaiseelan ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the Order dated 05.01.2019 passed by the III Additional Labour Court, Chennai in I.D.No.209 of 2017 and to quash the same.

For Petitioner : Mr.C.Gowthamaraj
Standing Counsel

For Respondent : No appearance

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ORDER

This Writ Petition is filed to call for the records relating to the Order dated 05.01.2019 passed by the III Additional Labour Court, Chennai in



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I.D.No.209 of 2017 and to quash the same.

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2.The respondent was employed as a conductor in the petitioner Corporation in Poonamallee Depot and his last drawn salary was Rs.9,402/-. On 07.03.2016, while the respondent was engaged as a Conductor in bus route 582/C, the respondent with an intention of taking away the public funds collected bus fare from the passengers and did not issue proper ticket for the same. When the checking squad inspected the bus it found that the respondent had collected Rs.39/- from three passengers and issued only manual tickets instead of electronic tickets, therefore, the respondent was charge sheeted under Section 25 (xli) (b), 25 (xli) (g) and 25 (xliii) of the Certified Standing Orders. The respondent submitted his explanation on 11.04.2016 to the charges and as the same were found to be unsatisfactory, a domestic enquiry was conducted and the Enquiry Officer submitted his report on 30.05.2016, concluding that the charges were proved. Based on the Enquiry Officer's report a second show cause notice was issued on 20.06.2016, for which the respondent submitted his explanation on 24.06.2016 and as the same was also found to be unsatisfactory, the respondent was terminated from service on 16.09.2016. Challenging the termination the respondent raised a dispute which was registered as



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I.D.No.209 of 2017. In the Labour Court the respondent examined himself as W.W.1 and marked Ex.W1 to Ex.W5 and the petitioner Corporation examined as M.W.1 and marked Ex.M1 and on consent of the parties Ex.M2 and Ex.M3 were marked.

3.The Labour Court on the basis of the oral and documentary evidence placed on record concluded that the charges under Sections 25(xli) (b) and 25(xliii) of the said Certified Standing Orders were not proved and that the charge under Section 25 (xli) (g) of the said Certified Standing Orders was proved. The Labour Court further held that since the major charge was unproved the punishment of dismissal for the remaining charge under Section 25 (xli) (g) was disproportionate and hence directed the petitioner to reinstate the respondent without backwages, continuity of service and any other attendant benefits.

4.Aggrieved by the award of the Labour Court the Corporation has filed the above writ petition.

5.The learned counsel for the petitioner assailed the award of the Labour Court stating that the Labour Court ought not to have interfered with



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the findings of the enquiry officer just because another view was possible.

The learned counsel prayed that the award of the Labour Court deserved to be set aside.

6.The learned counsel for the respondent submitted that the award of the Labour Court was based on appreciation of evidence and therefore no interference was called for.

7.I have heard both the learned counsels and perused the records.

8.In my view, the factual finding of the Labour Court cannot be interfered with unless and until it is found to be perverse. The reasoning of the Labour Court that the petitioner should have produced the entire business transaction of the respondent in the route on the particular day is justified considering that the defence taken by the respondent was that the ATM Machine given to him was a faulty one. If the entire transactions of the respondent in the route on the particular day were produced, the defence of the respondent could be tested, but as the Corporation failed to produce the same, there was no infirmity in the Labour Court accepting the respondents defense. It is further pertinent to note that the petitioner Corporation was not



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able to establish whether, except the disputed handwritten tickets any other hand written tickets were issued by the respondent. In my view the said fact is significant to disprove the defence of the respondent. I therefore find no infirmity in the finding of the Labour Court as regards charges 1 and 2. As regards the third charge absolutely no explanation was offered by the respondent for having the excess amount. Even the Labour Court held that the charge was proved on the ground that the respondent failed to offer any explanation for the same. Therefore I am of the view that the finding of the Labour Court on the third charge is valid.

9. On the quantum of punishment the Labour court interfered with the punishment on the ground that it was disproportionate to the misconduct of misappropriation of public funds. It is seen that the respondent has neither denied nor explained about the excess cash found in his possession. In my view the principle of *res ipsa loquitur* will apply to the third charge as there is no plausible explanation for the possession of excess cash. The possession of excess funds which is undisputed is either due to a dishonest act or due to gross negligence. When excess cash is not denied and no explanation is given, the only conclusion that can be drawn is that the third charge is



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proved. In my view, the Labour Court erred in interfering with the punishment imposed by the Management. The amount misappropriated may be trivial, but it shall have no bearing on the punishment is not based on the amount misappropriated, but on the act of misappropriation. The Labour Court merely on the ground of sympathy and generosity had interfered with the punishment imposed by the Management. The Hon'ble Supreme Court in the case of *Divisional Controller, KSRTC (NWKRTC) Vs. A.T.Mane* reported in *2005 (3) SCC 254* has categorically held that the punishment imposed by the Management should not be interfered with on the ground of sympathy and generosity. In this regard, it is pertinent to note that the Labour Court while denying backwages, continuity of service and other attendant benefits relied on the past conduct of the respondent. It is seen that the respondent was punished nine times for misconducts, out of which he was punished seven times for the very same misconduct. Therefore, the petitioner Corporation having lost confidence in the employee imposed the maximum punishment of dismissal from service. It is trite that the loss of confidence of the employer is of paramount consideration and hence the Labour Court ought not to have interfered with the punishment.



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10. In view of the above discussion, the award of the Labour Court is set aside and the writ petition is allowed. There shall be no order as to costs. Consequently the connected miscellaneous petition stands closed.

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Index : Yes / No
Internet : Yes / No
Speaking Order / Non-speaking Order
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To

The III Additional Labour Court,
Chennai.



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N.MALA, J.

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