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W.P.No.24124 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.24124 of 2024
and W.M.P.No.26381 of 2024

THE MANAGEMENT
OF METROPOLITAN TRANSPORT CORPORATION CHENNAI LIMITED PALLAVAN
HOUSE, PALLAVAN SALAI, CHENNAI - 600 002. .. **Petitioner**

Vs.

1.V.KANNIAPPAN
CONDUCTOR, STAFF NO. C59305,
PLOT NO. G2-117 GANGAI NAGAR 1ST STREET,
URAPAKKAM, CHENGELPET DISTRICT 603 210.

2.THE SPECIAL DEPUTY COMMISSIONER OF LABOUR
DMS COMPOUND, CHENNAI – 600 018.

.. **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari to call for the records relating to the order passed in A.P.No.229 of 2022 dated 09.10.2023 passed by the 2nd respondent herein and quash the same.

For the Petitioner : Mr.T.Chandrasekaran



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For the Respondents : Mr.N.Ishak
and Mr.K.Syed Meeran for R1
Mr.K.Surendran, AGP for R2

ORDER

This Writ Petition is filed challenging the order passed by the 2nd respondent – Special Deputy Commissioner of Labour, Chennai, dated 09.10.2023 made in A.P.No.229 of 2022, in and by which the approval petition filed by the petitioner – Management to approve the punishment of dismissal from service, imposed on the 1st respondent – Workman was rejected.

2. The brief facts leading to the filing of the Writ Petition are that the 1st respondent was working as a Conductor. While so, when he was on duty, on 03.03.2022, in route No.583/Q, upon inspection, it was found that in respect of two passengers, the Workman had not issued any ticket. However, he had accepted Rs.20/- from them. As a matter of fact the actual ticket price from the said place to the destination of the passengers was Rs.11/-. Therefore, on the said allegations, a charge memorandum was issued and domestic enquiry was conducted and thereafter, he was imposed with the punishment of dismissal from



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service on 29.11.2022.

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3. Thereafter, when the present petition was filed in A.P.No.229 of 2022 to approve the said punishment, the 2nd respondent considered the entire issue on the basis of the Judgment of the Hon'ble Supreme Court of India in ***Lalla Ram Vs. DCM Chemical Works¹***. After framing five issues, the 2nd respondent found that the enquiry was fair and proper, and one month salary was duly paid to the Workman and immediately the application was filed. In respect of the issue Nos.2 and 3, the 2nd respondent held against the Management that there is no proper evidence on record to prove the charges and therefore, the impugned action is nothing but victimisation. Aggrieved by the same, the petitioner – Management is before this Court.

4. Heard, *Mr.T.Chandrasekaran*, learned counsel for the petitioner – Management and *Mr.N.Ishak*, the learned counsel for the 1st respondent – Workman.

¹ AIR 1978 SC 1004



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5. The learned counsel appearing on behalf of the petitioner – Management would submit that when the concerned individual viz., the Ticket Checker has been examined in the domestic enquiry as a witness, who has categorically spoken about the inspection being done and the tickets not being issued to two passengers and the endorsement made by the Workman, viz., the Conductor and also the Driver in the inspection proceedings. The findings of the 2nd respondent that the charges are not proved by ample evidence is perverse. His further contention is that the said two passengers being from the north, cannot be summoned to be examined in the enquiry. Therefore, when the Management has let in evidence and the charges stood proved, the findings of the 2nd respondent is liable to be interfered with.

6. *Per contra*, the learned counsel appearing on behalf of the Workman would submit that even though the order was passed on 09.10.2023, the same was not implemented. Thereafter, the Workman had filed W.P.No.4733 of 2024 before this Court, to implement the order. This Court in its order had already recorded that even though it is stated on behalf of the Management that a Writ



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Petition is being filed by them, as against the award, no Writ Petition was filed till the disposal of the said Writ Petition and after recording the same, the Writ Petition to implement the award was allowed by an order dated 27.02.2024. Therefore, the present Writ Petition which was filed in August 2024, after the order, passed to implement the award is *per se* not maintainable. Once this Court has found that the order is valid and legal and ordered to be implemented, thereafter, the petitioner – Management is praying this Court again to come to a different conclusion. He would further submit that even otherwise the findings of the 2nd respondent are sustainable in law.

7. I have considered the rival submissions made on either side and perused the material records of the case.

8. Firstly I am in agreement with the submissions of the learned counsel for the Workman that in this case the impugned award was passed on 09.10.2023. Thereafter, the Workman had preferred W.P.No.4733 of 2024 for implementing the award. In the order of the Writ Petition, it reads that the



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learned Standing Counsel took notice. Thereafter, a positive mandamus has been issued to the respondent therein to implement the award and to permit the Workman to join duty with all benefits including continuity of service forthwith. The said order has also become final. The respondent therein is not aggrieved of the said order. Therefore, when the said order 27.02.2024 has become final, the petitioner – Management has filed the present Writ Petition on 09.08.2024.

9. It is settled law that whenever an order is passed to implement the award of a Labour Court or a statutory authority passed under the Labour legislations, the same cannot be thereafter assailed by the Management. Writ Petition if any ought to have filed at that time itself. In this case, the learned counsel for the petitioner – Management contends that the earlier Writ Petition was disposed of at the admission itself, and that at that time there was no opportunity for the Management to file a Writ Petition.

10. Even in that circumstance, the Management ought to have exercised its grievance as against the said order 27.02.2024. Once the said order dated



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27.02.2024 becomes final, subsequently, the Management cannot file the present Writ Petition. Useful reference in this regard can be made to the Judgment of the Division Bench of this Court in the case of *the Tamil Nadu Electricity Board Accounts and Executive Staff Union, Rep.by its Divisional Secretary Vs. Tamil Nadu Electricity Board, Rep. by its Chief Engineer (Personnel)* (Writ Petition No.21324 of 2011 etc., Batch dated 02.02.2024) to which I am also one of the party. Even otherwise, it can be seen that while considering as to the proof of charge, the 2nd respondent had also considered the non-examination of the Driver of the bus.

11. It is the case of the Management that the passengers were from other State and as such they could not be examined during the enquiry, which is fair. However, nothing prevented them to examine the Driver of the bus. Two views are possible as to whether the examination of the Driver was necessary or not and whether the examination of the Ticket Checker alone would be enough or not. When the 2nd respondent had exercised its discretion and rendered a finding about the evidence on record, it cannot be held that it is altogether perverse, as



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the driver was also available.

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12. For all the above reasons, this Writ Petition fails and it is dismissed.

No costs. Consequently, the connected miscellaneous petition is closed.

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Neutral Citation : Yes

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To
THE SPECIAL DEPUTY COMMISSIONER OF LABOUR
DMS COMPOUND, CHENNAI – 600 018.



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D.BHARATHA CHAKRAVARTHY, J.,

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