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W.P.Nos.27740 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.06.2024

C O R A M

THE HONOURABLE Dr. JUSTICE D.NAGARJUN

Writ Petition No.27740 of 2019
and
WMP.No.27270 of 2019

The Management,
Chennai Metropolitan Transport Corporation,
Pallavan Salai,
Chennai-600 002.

... Petitioner

Versus

The General Secretary,
State Transport Employee's Union,
Regn.No.73, Joint MTS (C.I.T.U).
Pallavan Salai,
Chennai-600 002.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of certiorari to call for the records pertaining to the order passed in I.D.No.156 of 2015 dated 29.03.2019 on the file of the III Additional Labour Court, Chennai and quash the same.

For petitioner ... Mr.M.Gowthamaraj

For Respondents ... Mr.S.T.Varadarajalu



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ORDER

This Writ Petition is filed by the petitioner Chennai Metropolitan Transport Corporation seeking to issue Writ of Certiorari to quash the orders passed in I.D.No. 156 of 2015 dated 29.03.2019 by the III Additional Labour Court, Chennai.

2. One Mr. A.David John Dass, was working as Security Guard attached to Tondiarpet Depot. On the allegation that during the period from December 1999 to September 2001, there was a shortage of 45,465 liters of Diesel value of Rs.8.30 lakhs., a charge memo was issued to him along with other employees. It is also alleged in the charge memo that he was habitual, negligent and has neglected the works and violated Section 25(Xiv), and tampered the records of the corporation by violating Section 25 (XXXvii), and he has committed theft, fraud, distant with corporation business in violation section 25(iv), and due to his negligence of service, there was revenue loss.

3. The explanation submitted by the said workmen on 08.05.2002 was not satisfied by the petitioner management. Domestic



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enquiry was ordered. The workmen has participated in the enquiry. The petitioner corporation marked 12 documents, he was permitted to take copies of the documents. He has cross examined the management witnesses. Ultimately, enquiry officer gave finding that the workmen by name Mr. A.David John Dass and others are responsible for the shortage of diesel.

4. Second show cause notice was sent to the workman on 23.07.2004 for which the workman has submitted an explanation. As per the second show cause notice dated 23.07.2004, it was proposed to reduce the stage of the workmen into five stages for a period of five years. After going through the explanation submitted by the workmen, the punishment was imposed reducing the pay of the workmen into three stages for a period of three years. In respect of the other show cause notice dated 19.11.2004, the workman was asked to pay Rs.59,286/- for casual revenue loss of Rs.8.30 lakhs. However after considering the explanation, the recovery amount was modified from proposed Rs.59,286/- to Rs.29,643/-.

5. Having not satisfied with the modifying orders, on behalf of



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the workmen, the union has raised Industrial Dispute in I.D.No.156 of 2015 and an enquiry was conducted and finally I.D.No.156 of 2015 was partly allowed on 21.03.2019. Aggrieved by the same, the petitioner corporation has preferred this Writ Petition. It is submitted by the learned counsel for petitioner corporation that the Labour Court has failed to note that incident was happened in the year 2004 and Industrial Dispute was raised after the lapse of 12 years. The delay and laches were not taken into consideration. It is submitted that there was material in the enquiry report to hold that workmen Mr. A.David John Dass, is responsible for revenue loss of Rs.8.30 lakhs. It is further submitted that the Labour Court has failed to appreciate that the workmen has not challenged the order of the disciplinary authority of finding the workmen guilty of the misconduct however challenged only the punishment.

6. No counter affidavit is filed on behalf of the respondent union.

Learned counsel for the respondent union has submitted that the order of the Labour Court is well reasoned order and has rightly set aside the punishment in respect of the imposition of penalty and in respect of punishment of a treating 193 days of suspension period as leave period.



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7. Heard both sides and perused the records.

8. The workmen was subjected to an enquiry in respect of his negligence in attending duties, tampering the records, committing theft and fraud. The punishment imposed by the Management is reduction of his basic pay by three stages for a period of three years and that the suspension period of 193 days was treated as leave period and directed the workmen to pay an amount of Rs.29,643/-. The petitioner corporation has not filed copy of the enquiry report, thereby, it is not clear as to why for one misconduct, three punishments have been imposed. Therefore, on account of not filing of enquiry report, this Court is handicapped to appreciate this aspect.

9. In any case, the workmen who has received three punishments from the management has raised the industrial dispute through union. As rightly submitted by the learned counsel for the petitioner that the union has not challenged the very finding of the enquiry officer and disciplinary authority that the workmen is guilty of the charges. However, what all the respondent union has challenged is only two punishments. The workmen has suffered three punishments, however



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reducing his basic pay by three stages for a period of three years, has not been challenged by the union. Therefore, the said finding has become final

10. The respondent has challenged two punishments namely treating the suspension period of 193 days as leave period and direction to the workmen to pay a sum of Rs.29,643/-. The Labour Court has set aside these two punishments. Aggrieved by the same, the present Writ Petition is filed by the petitioner management. Therefore, it is to be examined whether, the Labour Court has properly appreciated while setting aside the two punishments.

11. On going through the impugned orders, this Court finds no illegality or perversity in such finding of the Labour Court. The basis for the petitioner to challenge the impugned orders is the enquiry report. However learned counsel for the petitioner expressed inability of the petitioner to produce enquiry report. Unless enquiry report is filed before this Court, including the records in respect of consequential proceedings, it is very difficult to appreciate the contention of the petitioner. It is mentioned that the workmen has committed theft, fraud and that he was



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negligent etc. Unless enquiry report it is filed. It is difficult to appreciate the contention of the petitioner that the workmen is responsible for shortage of diesel.

12. Further it is ordered for recovery of money from the workmen, there shall be material to show that the workmen alone is directly responsible for shortage of diesel. It is alleged that the workmen and other employees are jointly responsible for misappropriation. It is very difficult to segregate the liability the workman and thereby it is also very difficult to order for recovery of specific amount from the workmen.

13. In respect of other finding which was interfered by the Labour Court is the setting aside of orders of treating the 193 days of suspension period of leave period, the learned counsel for the respondent has brought to the notice of this Court about the clause 26 (2)(c) of the certified standing order wherein it is mentioned as under:

“3. Provided further that when an order of suspension is passed under this clause, and the period between the date of which the workman was suspended



from duty pending enquiry or investigation or trial and the date on which the final orders or suspension was passed exceeds 30 days the workman shall be deemed to have been suspended only for 30 days for such short period as is specified in the said final orders of suspension and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period.”

14. On considering the above, it is clear that if the suspension period exceeds 30 days, the suspension deemed to have been restricted to only 30 days. In the case on hand, the suspension period of 193 days were treated as leave period. When clause 26(2)(C) of the certified standing orders speaks that the maximum number of days of suspension shall not be more than 30 days, the imposition of punishment of suspension of 193 days treated as leave period cannot be considered. In view of the above, the finding of the Trial Court are not perverse and thereby they cannot be interfered with.



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15. In the result, this Writ Petition is dismissed. No costs.

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Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No



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Dr.D.NAGARJUN, J.

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To

1. The General Secretary,
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Regn.No.73, Joint MTS (C.I.T.U).
Pallavan Salai,
Chennai-600 002.

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