



W.P(MD)No.18681 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.18681 of 2016

and

WMP(MD) Nos.13509 of 2016 &17280 of 2023

The Management,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited,
51/1, Pillai Thanneerpandal,
Thirumayam Road,
Pudukkottai – 622 001.

... Petitioner

Vs

1.The Special Deputy Commissioner of Labour,
Chennai.

2.G.Chinnadurai

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relates to the order passed by the 1st respondent herein dated 12.01.2016 in AP No.211 of 2014 and quash the same.



W.P(MD)No.18681 of 2016

WEB COPY

For Petitioner	: Mr. S.C. Herold Singh
For R1	: Mr.G.V.Vairam Santhosh Additional Government Pleader
For R2	: Mr.K.Rahul

ORDER

The Management, Tamil Nadu State Transport Corporation (Kumbakonam) Limited, Pudukkottai has filed this writ petition as against the order passed by the first respondent/the Special Deputy Commissioner of Labour, Chennai, on the application filed by the writ petitioner /Management, under Section 33 (2) (b) of the Industrial Dispute Act, 1947 (hereinafter called Act). The Management has conducted an enquiry as against the second respondent for certain charges and also dismissed him from service. The order of dismissal was referred to the first respondent for approval, as required under Section 33 (2)(b) of the Act. The first respondent by his order, dated 12.01.2016 refused to grant approval in A.P.No.211 of 2014. Challenging the same, the Management has filed this writ petition in the year 2016.



W.P(MD)No.18681 of 2016

WEB COPY

2.The learned counsel for the petitioner Management submits that the second respondent was working as a Conductor in the petitioner's Transport Corporation and while he was on duty in the bus bearing Reg.No.TN 01 N 3761 on 29.04.2013, the Checking Inspector of the petitioner Corporation inspected the bus at about 3.45 p.m and found that a group of two passengers, who have travelled from Karuppattipatti (Chellampatti) to Pallavarayanpatti, were in possession of unconnected tickets for a sum of Rs.6/-. On enquiry, those passengers informed the Checking Inspector that the second respondent herein, who was the Conductor of the bus has issued those tickets to four passengers, after collecting Rs.6/- from them. Thus, the second respondent has misappropriated a sum of Rs.24/- of Corporation amount, by issuing unconnected tickets for the concerned trip. Therefore, a charge memo was issued to him on 20.05.2013. He did not offer any explanation to the charge memo. Therefore, an enquiry officer was appointed and enquiry was contemplated. The second respondent has appeared for an enquiry



W.P(MD)No.18681 of 2016

WEB COPY

on 17.10.2013 and also cross examined the Management side witnesses. The Management has examined a witness/the concerned Checking Inspector, by name Meenakshi Sundaram and also marked six documents. On completion of enquiry, the Enquiry officer has filed a report on 21.10.2013 holding that the charges levelled as against the second respondent were proved. Based on that, the second respondent was also called upon to offer his explanation by a proceedings, dated 24.10.2013. He did not submit any objections and therefore, a second show cause notice was issued on 07.03.2014 by proposing a punishment of dismissal from service. The second respondent has replied to the second show cause notice on 27.03.2014. Not satisfying with the same, the Disciplinary Authority dismissed the second respondent from service, by order dated 27.09.2014. Before taking the decision, the Disciplinary Authority has taken into consideration of the previous conduct of the second respondent that he has suffered 45 punishments in his service, including 6 punishments for similar misconduct of misappropriation.



W.P(MD)No.18681 of 2016

WEB COPY

3.The learned counsel further submits that the petitioner Management has filed an application before the first respondent, under Section 33 (2) (b) of the Act in A.P.No.211 of 2014, sought for an approval for the order of dismissal of the second respondent. According to the learned counsel, though the first respondent has found that the enquiry was conducted in a fair and proper manner, *prima facie* case was made out by the Management, no unfair labour practice was adopted by the Management and approval petition was filed as a part of the disciplinary proceedings, held that one month wages was not fully paid to the second respondent and rejected the approval petition filed by the petitioner Management. According to the learned counsel, this findings of the first respondent is not correct. The last drawn wages of the second respondent was Rs.17,520/-, including 100% DA, which was paid to the second respondent on the date of order of punishment, vide Cheque No. 319853, dated 27.09.2014, drawn on Canara Bank, Pudukkottai and was also sent to the second respondent along with the dismissal



W.P(MD)No.18681 of 2016

WEB COPY

order. However, the first respondent has held that Dearness Allowance was not calculated at the rate of 107% and therefore, rejected the application filed by the petitioner Management for approval. The learned counsel further submits that the DA enhancement from 100% to 107% was announced by the Government, vide G.O.Ms.No.245, dated 10.10.2014, after the order of the punishment, dated 27.09.2014, however, the same was ordered to be implemented w.e.f. 01.07.2014. After clarification, the Management has calculated the difference amount of Rs.590/- and paid the same to the second respondent vide Cheque No.956322, dated 08.06.2015. Therefore, the findings of the first respondent that the wages as required under Section 33(2) (b) of the Act has not been paid to the second respondent is not correct. Hence, the order of the first respondent is liable to be set aside.

4.The learned counsel appearing for the second respondent submits that it is necessary to decide the interim application filed by the petitioner in WMP(MD) No.17280 of 2023



W.P(MD)No.18681 of 2016

in WP(MD) No.18681 of 2016 at first, before deciding the main writ petition. which was filed to direct the petitioner Management to pay the second respondent herein proper current wages.

5.The learned counsel further submits that pending this writ petition, the second respondent has filed another application in WMP(MD) No.16208 of 2016 sought for a direction to the petitioner Management to re-instate the second respondent in service or to pay the petitioner a last drawn wages at the rate of Rs.17,520/- per month till the disposal of the main writ petition and that was also ordered by this Court on 27.03.2019. Challenging the same, the petitioner Management has preferred a writ appeal in WA(MD) No. 941 of 2019, which was dismissed by this Court on 25.09.2019. Thereafter, in order to avoid payment under Section 17(b) of the Act, the petitioner Management has re-instated the second respondent from the month of March 2021. However, the Management is paying the wages at the rate of Rs.17,980/- per month at fixed rate, excluding the other applicable allowances such as Dearness



W.P(MD)No.18681 of 2016

WEB COPY

Allowance, Grade Pay, City Compensatory Allowance, House Rent Allowance, Washing Allowance and Medical Allowance. He further submits that a junior of this petitioner, by name, one Ramaraju, who joined duty on 15.12.1998 is getting a gross pay of Rs.68,881.75/- with a basic pay of Rs.46,100/-. Therefore, the second respondent has moved this application in WMP(MD) No.17280 of 2023, for a direction, directing the petitioner Management to pay the current/equal wages at the rate of Rs.68,881.75/- with a basic pay of Rs.46,100/-, every month, on par with his junior, from March 2021 till the date of disposal of this writ petition. In support of this application, the learned counsel for the second respondent has relied on the Judgment of the Division Bench of the Principal Seat of this Court in W.A.MP.No.6776 of 2003 in WA No.3287 of 2002, dated 13.10.2004. The learned counsel has also relied on the another Judgment of the Principal Seat of this Court in the case of K.Karunakaran Vs.Thanthai Periyar Transport Corporation Ltd, in WMP No.74421 of 2003 in W.P.No.6032 of 1997, dated 19.09.2003.



W.P(MD)No.18681 of 2016

WEB COPY

6.The learned counsel further submits that the Management has not proved the case as against the second respondent, before the enquiry officer. However, the enquiry officer has submitted his report as proved. The charges framed as against the second respondent is that he has issued four unconnected tickets to the passengers and thereby misappropriated a sum of Rs.24/-, however, those passengers were not examined during the enquiry. Therefore, the Management has not established its case that the second respondent has issued bogus tickets, which are not connected to the concerned trip. The learned counsel further submits that this is a specific case of the second respondent that the Checking Inspector has collected the tickets from the passengers and has taken those unconnected tickets from his pocket and projected the case as against the second respondent. When such a specific plea has been taken by the second respondent, in all fairness, the Management ought to have examined the passengers and should have established its case properly. Therefore, the punishment imposed on the petitioner cannot be sustained on this ground.



W.P(MD)No.18681 of 2016

WEB COPY

7.In reply, the learned counsel for the petitioner Management has raised objections that the first respondent has rendered a finding with regard to this issue that the charges levelled as against the second respondent have been proved by the Management, however, refused to grant approval on the sole ground that the petitioner Management has not paid the one month wages to the second respondent, as required under Section 33 (2)(b) of the Act. Therefore, the petitioner cannot raise this plea, without challenging the findings of the first respondent.

8.The learned counsel for the second respondent has relied on the Judgment of this Court in W.P.No.5870 of 1979, dated 07.12.1981, wherein, this Court has held as follows:-

"4. On going through the order of the 3rd respondent, I find that he has not discussed the salient features of Ex.R.1 the contract entered into between the petitioner and the Corporation, to find out as to whether the petitioner can be characterized as 'a person employed within the meaning of the Act,



WEB COPY



W.P(MD)No.18681 of 2016

Equally so, the third respondent has not discussed the evidence placed by the parties on this aspect. It is contended on behalf of the petitioner that the Corporation cannot, in the present writ petition canvass the findings which have gone against it before the third respondent, and on that ground, sustain the order of the third respondent. I am not able to sustain this approach of the petitioner. The reasons are as follows:-

The ultimate order passed by the third respondent has enured to the benefit of the Corporation. Hence, there is no scope for the Corporation to approach this Court independently agitating over this aspect. The Supreme Court in Northern Railway Co-operative Credit Society Ltd. v. Industrial Tribunal Jaipur [1967-II LL.J. 46) was prepared to apply the principles of rule 22 of Order XLI of the Code of Civil Procedure in the matter of an appeal before it against the order of an industrial tribunal, even though in the rules of the Supreme Court there was no rule analogous to rule 22 of Order XLI of the Code of Civil Procedure and held that the party is entitled to support the decision of the tribunal even on grounds which were not



W.P(MD)No.18681 of 2016

accepted by the tribunal or on other grounds which may not have been taken notice of by the tribunal while they were patent on the face of the record. Learned judges of the Supreme Court referred to two Judgments of the same court, one is Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji (AIR 1965 SC 669) and the other in 20 Powari Tea Estate v. Barkataki [1965-II L.L.J. 102]. In my view, the same principles should be invoked in writ jurisdiction also while canvassing orders passed by authorities similar to the third respondent. There is no scope for the party who has ultimately succeeded before the statutory tribunal and authority to approach this Court under Article 226 of the Constitution of India for the only purpose of canvassing a particular finding which has gone against him. There is a possibility that a relevant aspect or material already on record which, if properly assessed and considered, would have led to a finding being rendered on that aspect in favour of the party concerned. It would be equitable for this court, in the exercise of its jurisdiction under Art.226 of the Constitution of India, to permit such a party to canvass those aspects and support the ultimate order



W.P(MD)No.18681 of 2016

of the tribunal or authority on grounds, which have been negatived by it."

9.This Court considered the rival submissions made and also perused the materials placed on record.

10.Admittedly, the second respondent was working as a conductor under the petitioner Management. While he was on duty in a trip from Vadakoor to Gandharvakottai, in a bus bearing Reg.No.TN 01 N 3761 on 29.04.2013, there was checking by the Checking Inspector at Parukkaviduthi Bridge and during the inspection, they found that a group of two passengers, who have travelled from Karuppattipatti (Chellampatti) to Pallavarayanpatti and another group of two passengers, who travelled from Karuppattipatti (Chellampatti) to Pallavarayanpatti were issued with tickets, which were not connected to the concerned trip. Since the conductor/the second respondent has issued the unconnected tickets, he was issued with a charge memo on 20.05.2013, for the allegation



W.P(MD)No.18681 of 2016

WEB COPY

of misappropriation of a sum of Rs.24/- to the Management. The second respondent did not offer any explanation to the charge memo. Therefore, an enquiry was ordered and the second respondent has participated in the enquiry and marked two documents as Exs.B1 and B2. The enquiry officer has submitted his report on 21.10.2013 holding that the charges were proved and enquiry report was also furnished to the second respondent and he was called upon to submit his objection, if any, by a proceedings, dated 24.10.2013. The second respondent did not offer his objections. Therefore, a second show cause notice was issued to him on 07.03.2014 by proposing a punishment of dismissal from service. The second respondent has replied to the second show cause notice on 27.03.2014. Not satisfied with the reply, the Disciplinary Authority has imposed a punishment of dismissal from service by order, dated 27.09.2014. It is to be noted that the decision was taken by the Disciplinary Authority after considering the previous conduct of the second respondent that he has suffered 45 punishments in his service, including 6 punishments for similar misconduct of misappropriation. This dismissal order has



W.P(MD)No.18681 of 2016

WEB COPY

also been communicated to the second respondent along with a cheque for a sum of Rs.17,520/-, dated 27.09.2014, the last drawn wages of the second respondent.

11.The scope of the enquiry by the first respondent under Section 33(2)(b) of the Act is to ascertain:-

- i. Whether the Disciplinary enquiry was conducted in a proper manner and in accordance with the relevant Act and Rules?
- ii. Whether the Principles of natural justice was followed?
- iii. Whether a *prima facie* case for dismissal based on the legal evidence adduced during the enquiry is made out?
- iv. Whether the employer has appreciated the evidence properly and the punishment is not amounting to unfair labour practice or not intending to victimize the employee?
- v. Whether the employer has paid or offer to pay the wages of one month to the employee?



W.P(MD)No.18681 of 2016

In this case, the first respondent has framed the following issues before deciding the A.P.No.211 of 2014:-

- i. Whether the domestic enquiry was conducted in accordance with the standing orders and the principles of natural justice?
- ii. Whether the Management has proved the *prima facie* case as per the legal evidence?
- iii. Whether the Management has imposed the punishment in order to victimize the employee?
- iv. Whether one month wages was fully paid to the employee?

12.The first respondent has found that the first three issues are properly complied with by the Management. However, on the issue No.4, has given a finding that the Management has not paid the one month wages to the employee, as required under the Act and rejected the petition for approval.



W.P(MD)No.18681 of 2016

WEB COPY

13.The only issue, which needs to be decided in this writ petition is that whether the findings of the first respondent that the last drawn wages for one month payable to the second respondent as per the provision under Section 33(2)(b) of the Act has been paid to him or not. The first respondent found that the last drawn wages was paid, however not at the rate of enhanced DA 107%. It is an admitted case that the last drawn wages of the second respondent on the date of punishment was Rs.17,520/-, which includes 100% DA and the same was applicable to the second respondent at that relevant point of time. The said amount was paid to the second respondent vide Cheque No.319853, dated 27.09.2014 at the time of sending the dismissal order itself. The second respondent claims that the enhanced DA of 107%, as per G.O.No.245, dated 10.10.2014, with retrospective effect from 01.07.2014 has not been paid to the second respondent. It is reported that the differential amount due to the enhanced DA for a sum of Rs.590/- was also paid to the second respondent, vide Cheque No.956322, dated 08.06.2015 and



W.P(MD)No.18681 of 2016

WEB COPY

therefore, the findings of the first respondent is not correct, which needs to be interfered with.

14. Another contention raised by the learned counsel for the second respondent is that the enquiry has not been conducted in a proper manner. The ratio, which needs to be appreciated in a domestic enquiry is "preponderance of probability". During the enquiry proceedings, the second respondent was allowed to cross examine the witness/the Checking Inspector, Meenakshi Sundaram. The statements of the passengers and the unconnected tickets, which were recovered have been marked as documents during the enquiry. The second respondent has not disputed the statements of the passengers. It is not possible for the Management to trace out all the passengers and subject them for examination. Though the second respondent has claimed that in order to victimize him, this punishment has been imposed on him, he has not raised any grounds to produce any witness either the Management or the Checking Inspector is having any motive as against him.



W.P(MD)No.18681 of 2016

WEB COPY

15.Insofar as the claim of the second respondent for the current wages is concerned, this Court has noted down that the application filed by the second respondent in WMP(MD) No.16208 of 2016 to re-instate him in service or to pay the last drawn wages till the disposal of the main writ petition was ordered by this Court on 27.03.2019, as against which, writ appeal preferred by the petitioner Management in WA(MD) No.941 of 2019 was dismissed by this Court on 25.09.2019. It appears that in order to avoid payment under Section 17(b) of the Act, the petitioner Management has re-instated the second respondent in service from the month of March 2021. However, the payment of wages has not been made as that of his junior. Therefore, he has moved this application seeking current/equal wages at the rate of Rs.68,881.75/- with a basic pay of Rs.46,100/-, every month, on par with his junior, from March 2021 till the date of disposal of this writ petition.



W.P(MD)No.18681 of 2016

WEB COPY

16.This Court is of the view that in order to avoid payment under Section 17(b) of the Act, the petitioner Management has inducted the petitioner in the month of March -2021 in service, however, failed to pay the wages as per norms.

17.In view of the foregoing observations and discussions, this Court has come to the conclusion that the enquiry conducted in this case is as per the standing orders and by providing sufficient opportunity to the second respondent; the Principles of natural justice was followed. Therefore, this Court is of the view that there is no error in the findings of the enquiry officer and therefore, the order passed by the first respondent in A.P.No.211 of 2014 is liable to be set aside.

18.Accordingly, this writ petition is allowed and the order impugned in this writ petition is hereby set aside and the order of punishment imposed by the Disciplinary Authority on the second respondent is confirmed. WMP(MD) No.17280 of 2023 in WP(MD)



W.P(MD)No.18681 of 2016

WEB COPY

No.18681 of 2016 is allowed. The petitioner Management is directed to pay proper wages as applicable/payable to the second respondent from the date of his reinstatement in service, i.e from March 2021 to till date, within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petition in WMP(MD) Nos.13509 of 2016 is closed.

11.09.2024

NCC:Yes/No
Index:Yes
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To

The Special Deputy Commissioner of Labour,
Chennai.



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W.P(MD)No.18681 of 2016

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.18681 of 2016 and
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11.09.2024