



W.A(MD)No.593 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESHKUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

W.A(MD)No.593 of 2024

S.Sampath

... Appellants

vs.

1. The Presiding Officer,
Labour Court,
Madurai.

2. The Management,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye-pass Road,
Madurai-16.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 06.08.2021 made in W.P(MD)No.4472 of 2013.

For Appellant : Mr.B.Vinoth Balan
For R2 : Mr.S.C.Herold Singh

JUDGMENT

(Judgment of the Court was made by **R.SURESHKUMAR, J.**)

This writ appeal has been directed against the order passed by the Writ Court, dated 06.08.2021, made in W.P(MD)No.4472 of 2013.



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2. The appellant herein, who is the writ petitioner before the Writ Court, was the employee of the respondent Transport Corporation, working as a Conductor. Though he had been in service for 17 years and he claimed that he has rendered unblemished service for 17 years, the fact remains that there had been some disciplinary proceedings which ended in minor punishments.

3. Be that as it may, a charge memo has been issued against him, pursuant to which, a domestic enquiry was conducted, as the charge framed against him that he has misappropriated the funds of the transport corporation, by issuing the old tickets or used tickets in the particular trip to the passengers, was found against him. Therefore, based on the domestic enquiry conducted in this regard, a punishment of removal from service has been inflicted against him by the employer.

4. As against which, the petitioner/appellant raised the industrial dispute in I.D.No.29 of 2009, on the file of the Labour Court, Madurai.

5. The Labour Court, Madurai, vide its award dated 21.06.2012, accepted the findings of the enquiry officer and the punishment awarded against him and ultimately, dismissed the said ID by passing the award.



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6. As against the award passed by the Labour Court, the petitioner/appellant filed the writ petition in W.P(MD)No.4472 of 2013, which was also considered and rejected by the learned Judge through the impugned order.

7. Assailing the said orders, Mr.B.Vinoth Balan, learned counsel appearing for the appellant, would submit that, the passengers who travelled in the bus on the particular trip, have not been enquired. Had they been enquired, the innocence of the petitioner/appellant would have been proved.

8. The said ground raised by the petitioner/appellant is not appealing to us. The reason being that, the Checking Inspector, who caught him, was examined and also it has been proved during the enquiry that, he had changed the ticket numbers and issued the used tickets in the current trip also. This has been taken into account by the disciplinary authority, also has been taken into account by the Labour Court.

9. Ultimately, the Labour Court has given the following reasons to come to such a conclusion that the ID has to be rejected.



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10. This is what has been held by the Labour Court in the award:-

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"I have perused the rulings submitted by the petitioner and respondent. There is no quarrel about the proposition laid down in the above rulings. The respondent counsel submitted that the charges against the petitioner were proved and the petitioner was charged with misappropriation of public amount and his dismissal is correct. The respondent counsel has relied upon the past records of the petitioner. On perusal of the past records, it is seen that he was awarded lesser punishment for several misconducts on several occasions. The list of punishment were also furnished to the petitioner along with 2nd show cause notice. The petitioner has not denied the previous punishments awarded to him. The respondent counsel submitted that the post of conductor is a responsible post and the duty of the conductor is to collect the correct ticket fare and remit the amount to the management. The conductor should submit the proper account for the collection of amount. The post of the conductor is a post of faith and confidence, if any sympathy is shown to the conductor it is to be considered as a misplaced sympathy. The employee holds a position of trust where honesty and integrity are inbuilt requirement of functioning. It would not be proper to deal with the matter leniently in case of misappropriation of public funds. Where the person deals with public money or engaged in the financial transactions or acts in the fiduciary capacity to the higher degree of honesty and integrity is a must. This incident could not be characterized as accidental one. If any correction is made in the ticket book or invoice it may create doubt on the conductor. The petitioner's counsel submitted that non examination of passengers during the enquiry is fatal. Mere the non examination of passenger will not affect the management of the case. Checking Inspectors are the main witnesses. There is no rule to say that the evidence of checking Inspector cannot be accepted without corroboration. The evidence of Checking Inspector is corroborating the statement in Ex.M1. In 1997 (2) LLN P.50 — State of Haryana and another /Vs/ Rattan Singh, it is held that the statement of passenger need not be recorded and it may not be expected to record such



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statement from the passengers. It is sufficient if Checking Inspector states that the passengers told him so. The quantum of amount misappropriated is irrelevant. What is to be borne in mind is the nature of duties and action of conductor resulting in the loss of revenue to the corporation. Misconduct relating to non issuance of ticket after receiving the amount or non issuance of ticket without receiving the amount or reissue of old ticket instead of real and valid ticket alteration of ticket number and amount are serious misconducts. Misconduct of misappropriation of ticket fair by adopting any one of the mode as indicated above cannot be considered as a minor mistake. Length of service is not relevant in a case of misappropriation of public fund. Section 11 A of ID Act cannot be invoked on the ground that the petitioner had served for 17 years or more. Misplaced sympathy cannot be a good for invalidating the order of dismissal. An employer cannot be expected to retain a dishonest employee who collects the fair amount and issues of old ticket instead of correct ticket or did not issue any ticket and thereby enriched himself at the expense of employer. The management cannot keep the constant watch on the conductors of the respondent and all the conductors of the Transport Corporation are supposed to act honestly and not to cheat the employer and the travelling public. The conduct of the conductor shows that he cannot be trusted with even for a small amount. A person who had lost the confidence of the employer should not have been foisted on the department by the Court. He is unfit for retention in service. The charges were proved against the petitioner. The punishment is not shockingly disproportionate. The punishment of dismissal is correct. Hence, this court is not inclined to interfere with the order of punishment. The petitioner is not entitled to any relief. The points are answered accordingly."

11. As against the said award, when the writ petition has been filed, the learned Judge also has considered this aspect in proper perspective and



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ultimately, has come to the conclusion that the writ petition is deserved to be dismissed.

12. Since the learned counsel appearing for the petitioner before the Writ Court wanted to consider the grant of provident fund collected from the petitioner/appellant, that was directed by the learned Judge to give a representation and if such representation is given, the same shall be considered by the employer and whatever the eligible amount payable to the employee/petitioner shall be paid, also has been considered and orders have been granted.

13. When that being so, we do not find any reason to interfere with the order of the learned Judge, who confirmed the award passed by the Labour Court.

14. The reason being that, the Labour Court has given cogent reasons for coming to such a conclusion as to why the employer's version has to be accepted and the employee's version has to be rejected.



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15. Moreover, the Labour Court has given specific reasons as to why such a decision has to be taken to reject the ID. Those reasons, as has been extracted herein above, if it is looked into, it cannot be stated that it is a perverse finding on the part of the Labour Court. Therefore, the confirmation given by the Writ Court through the impugned order, is to be accepted. Hence, ultimately this Writ Appeal fails. Accordingly, it is dismissed. No costs.

(R.S.K., J.)

(G.A.M., J.)

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Index : Yes / No
Neutral Citation : Yes / No
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To

The Presiding Officer,
Labour Court,
Madurai.



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