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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.10533 of 2006

and

WMP.Nos.11903 of 2006 & 11414 of 2019

Tamil Nadu State Transport
Corporation (Salem) Ltd,
rep by its Managing Director,
Salem.

...Petitioner

-vs-

1. The Presiding Officer,
Labour Court, Salem.

2. R.Periyasamy

...Respondents

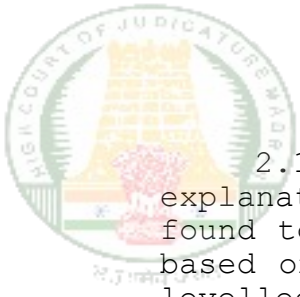
Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the 1st respondent in I.D.No.349/2000 dated 20.12.2004 and quash the same.

For Petitioner : Ms.K.Thangam for
Mr.D.Raghu
For R2 : Mr.L.Swaminathan

ORDER

The writ petition has been filed, seeking to quash the award of the 1st respondent dated 20.12.2004 in I.D.No.349 of 2000, by which the 2nd Respondent / Employee was directed to be reinstated in service with continuity of service without back wages dismissed from service.

2. The case of the Petitioner / Management is that the 2nd Respondent/Employee was employed as a Conductor in the Management from 15.09.1994 and on 15.07.1998, during inspection, it was found that though the Employee had collected Rs.3/- as ticket fare from three passengers for their tickets @ Rs.1/- each he had not issued tickets to them. In addition to the said misconduct, the Employee had not filled in the invoice and finding that the irresponsible act of the Employee amounted to a misconduct under Clause 19(1) (d) of the Standing orders of the Management, a charge sheet was issued to him on 20.07.1998.



2.1. It is further case of the Management that as the explanation dated 17.08.1998 of the Employee respondent was found to be unsatisfactory, a domestic enquiry was conducted and based on the report of the Enquiry officer that all the charges levelled against the Employee were proved and taking into account the past conduct of the Employee, a second show cause notice dated 10.09.1999 together with enquiry proceedings and findings was issued, proposing the punishment of dismissal. The explanation of the 2nd respondent for the second show cause notice was not satisfactory, as he had committed similar misconducts twice in earlier periods, for which, he was imposed lesser punishment and therefore, he was dismissed from service by an order dated 30.09.1999.

2.2. It is also the case of the Management that aggrieved by the order of dismissal, the Employee raised an Industrial Dispute before the 1st respondent in I.D.No.349 of 2000, in which, the 1st respondent, by an award dated 20.12.2004, has set aside the dismissal order and has directed reinstatement of the Employee in service with continuity of service. Against the award of the Labour Court dated 20.12.2004, the Management is before this Court.

3. Learned counsel for the Employee contended that the punishment imposed on the Employee is disproportionate to the charges levelled against him and is also excessive. The charge against the Employee was not duly established, as the Labour Court held that the attempt of misappropriation of Rs.3/- is per se false. Thus, it was prayed that the award does not warrant any interference by this Court.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. The Labour Court in its award at Paragraph No.6 has held that the Disciplinary Enquiry is not fair and proper, though the Management has let in evidence to establish the charges and it was also held that the charge against the Employee has not been duly established. The relevant portion of the award (Para-6) is extracted below:-

6. இவ்வழக்கில் உள்விசாரணை முறையான நடத்தப்பட்டுள்ளதா என்பதை பற்றி முதல் நிலையான தீர்மானிக்கப்பட்டுள்ளது, கூிசாரணை முறையாக நடத்தப்பட்டுள்ளது என்றும், ஆனால் விசாரணை அதிகாரியின் முடிவு, முறை திறம்பியது என்றும் முடிவு, செய்யப்பட்டுள்ளதால், எதிர்மனுதாரருக்கு குற்றச்சாட்டுகளை நிரூபிக்க வாய்ப்பு, அளிக்கப்பட்டது. எதிர் மனுதாரர் தரப்பில் எ.சா.ஆ.1 ஆக தங்கராஜ் என்பவரும் எ.சா.2 ஆக சுப்ரமணியன் என்பவரும் விசாரிக்கப்பட்டுள்ளார்கள். எ.சா.ஆ. 1 முதல் 18 வரை தாக்கல் செய்யப்பட்டுள்ளன. மனுதாரர் தரப்பில் ம.சா.1 ஆக பெரியசாமி என்பவரும் ம.சா.2 ஆக அருளாசலம் என்பவரும் ம.சா.3 ஆக ரத்தினம் என்பவரும் விசாரிக்கப்பட்டுள்ளார்கள், ம.சா.ஆ.1 மட்டும் தாக்கல் செய்யப்பட்டுள்ளது.



6. The contention of the Management is that the Labour Court, having accepted the plea made by it that three passengers have been allowed to travel without tickets and that there were similar misconducts by the Employee, ought not to have interfered with the order of dismissal. For the sake of convenience, the observation of the Labour Court is extracted as under:

எனவே டிக் கெட் இல்லாமல் பயணம் செய்ய அனுமதித்தது தவறானதாகும். மனுதாரர் இ தற்கு முன்பு, இது போன்ற தவறுகளை செய்துள்ளார் என்று இரண்டாவது காரணம் காட்டும் அறிவிப்பில் குறிப்பிட்டுள்ளதை மனுதாரர் மறுக்கவில்லை.

7. The Labour Court has held that the charges are not proved with oral and documentary evidence, which infers that the Employee had issued tickets after receiving Rs.3/- from the passengers and therefore, the finding of the Disciplinary Authority, that the Employee allowed three passengers to travel without tickets, is not correct. It may be true that there are past records and the same can be relied upon, provided present charges are proved. However, the charges were held to be unproved and therefore, the Labour Court, while ordering reinstatement with continuity of service and other attendant benefits, deprived back wages, holding that such deprivation / punishment is proportionate to the charges. Moreover, the award is based on a finding of fact and when the Labour Court has exercised its powers under Section 11-A and converted the punishment of dismissal from service into the one of denial of back wages, the same cannot be blindly interfered with. The Supreme Court in the case reported in AIR 1964 SC 477 (Syed Yakoob vs. K.S.Radhakrishnan), followed by Kerala High Court in Instrumentation Employee's Union vs. Labour Court, Kozhikode, reported in 1993 (I) LLN 75, clearly held that a finding of fact rendered by the Labour Court cannot be interfered with, unless or otherwise there is perversity.

8. This Court finds no perversity in the award that has been passed as early as in 2004. The employee was dismissed from service on 30.09.1999 and he was deprived backwages nearly after a lapse of five years for the so-called non issuance of three tickets for three passengers at Rs.1/-, which itself is a major punishment. Though the award of the Labour Court runs contrary to its own view, namely, having accepted the argument of the Management that the Employee had permitted three passengers to travel without tickets, there was a specific finding that the charges are not proved, it amounts to rendering a finding of fact, which need not be interfered with by this Court, even though there may be another view possible to be taken in the present facts of the case.

9. In the result, finding that the Labour Court has rightly exercised its power under Section 11(A) of the I.D. Act 1947 and



dismissed the award, this Writ Petition is dismissed. The Management is directed to implement the award, within a period of Six Months from the date of receipt of a copy of the order, failing which, it is open to the Employee to make complaint under Section 29 of the I.D. 1947 against persons falling under Section 32 of the I.D.Act. It is further made clear that if the award is not complied with and a complaint is made to that effect, the Government is directed to sanction prosecution against the Officials, falling under Section 32 of the I.D.Act, 1947, in consonance with Section 34 of the I.D.Act, 1947 for a suitable decision by the Competent Court. Adverse remarks shall also be entered into the Service Register of the Officials, if the award is not implemented within the time stipulated supra. No costs. Consequently connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dpq

To:

1. The Managing Director,
Tamilnadu State Transport Corporation
Salem (Ltd.,)
Salem.
2. The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.L.Swaminathan, Advocate, S.R.No.37641
+1cc to Mr.D.Raghu, Advocate, S.R.No.37471

W.P.No.10533 of 2006

GSM(CO)
RGA(24/11/2021)