

(2010) 10 MAD CK 0341

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 14011 of 2009

M. Subramanian

APPELLANT

Vs

The Management
Tamil Nadu Transport
Corporation and The
Labour Court

RESPONDENT

Date of Decision: Oct. 25, 2010

Acts Referred:

- Industrial Disputes Act, 1947 - Section 11A, 2(A)(2)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: A.V. Rajasekar, for the Appellant; P. Thilak Kumar, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The Petitioner has come forward to file the present writ petition, challenging an award passed by the second Respondent labour Court, Trichy in I.D.O.P. No. 12 of 2001 dated 1/2/2005.

2. By the aforesaid award, the Petitioner's claim for reinstatement was negated by the labour Court. Even though, the award was made as early as February 2005, the Petitioner has chosen to challenge the same after the period of four and a half years.

3. In the affidavit filed in support of the writ petition, there is no sufficient explanation for the long delay in moving this Court. The averments made in paragraph 8 of the affidavit are not sufficient to explain the delay. In any event, it is seen from the records that the Petitioner, who was working as a Conductor in the

first Respondent/Transport Corporation (subsequently merged with the State own Transport Corporation). He was dismissed from service for the acts of misconduct vide order dated 30/5/1992. Subsequent to the dismissal, he filed an appeal to the Managing Director, who was also rejected on 15/7/1992. After 9 years, the Petitioner raised the dispute u/s 2(A)(2) of the I.D. Act before the Assistant Commissioner of Labour, Trichy. The Conciliation Officer gave a failure report dated 25/1/2001. On the strength of the failure report, he filed a claim statement dated 25/1/2001 before the second Respondent labour Court. The labour Court took up the dispute as I.D.O.P. No. 12 of 2001 and issued notice to the first Respondent.

4. The first Respondent filed a counter statement dated Nil/December, 2001 before the labour Court. On behalf of the first Respondent, sixteen documents were filed and marked as Exs.M.1 to M.16.

5. The labour Court framed two issues.

(i). The first issue was the charges against the Petitioner were proved and

(ii). the second issued was whether the punishment of dismissal was grossly disproportionate.

6. Beyond the first charge, the labour Court found that both the charges were proved against the Petitioner. The passenger of the bus was examined in the enquiry and it was also found that the Petitioner had collected the fare and the luggage charges were not marked and there were several erases and corrections in the counter foils and therefore, the Court found that the passenger has clearly stated that there were three luggages but not one luggage as alleged by the Petitioner. It also found that the enquiry Officer's finding was proper and it was based on legal evidence. On the proportionality of punishment, the Court found that the nature of misconduct is such that it is materially the quantum of money involved but it goes to the root of the misconduct and therefore, it considered the punishment of dismissal was not disproportionate.

7. The contention of the Petitioner that there was no evidence cannot be accepted and it is a rare case where the passenger himself was examined who depose against the Petitioner. On the disproportionate of the penalty, this Court is not inclined to consider that the labour Court had failed to discharge its power u/s 11A of the Industrial Disputes Act.

8. Under similar circumstances, the Supreme Court in [U.P. State Road Transport Corporation Vs. Nanhe Lal Kushwaha](#), has held as follows:

15. As the Respondent was appointed as a conductor, it is not the amount which would be very material for the purpose of determining the quantum of punishment. He was charged for commission of similar misconducts on six occasions; at least misconduct has been found to be proved in respect of two charges even by the labour Court. In that view of the matter, we are of the opinion that the impugned

judgment cannot be sustained. It is set aside accordingly.

9. In view of the above, the writ petition deserves dismissal and accordingly, the same is dismissed. No costs.