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S.K. Suriyamoorthi Vs The Management, Tamil Nadu Government Transport Corporation

Writ Appeal No. 1226 of 2014

Court: Madras High Court

Date of Decision: Dec. 9, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 226

Hon'ble Judges: Satish K. Agnihotri, J; K.K. Sasidharan, J

Bench: Division Bench

Judgement

1. This instant intra-court appeal arises from the order dated 17.6.2013 passed by the learned Single Judge in W.P.No. 23256 of 2003.

2. The facts in nutshell are that the appellant herein/writ petitioner, while working as Conductor under the first respondent Corporation, was

intercepted by the Checking Inspectors in bus bearing No. TN 29 0073, at Mannadipatti on the bus route between Tirupattur and Harur on

2.6.1992. It was found that the appellant had not issued tickets to 25 passengers, however, collected the amount from them and misappropriated

the same. The statements of passengers, driver as well as the appellant were recorded by the checking Inspectors. Thereafter, a report was

submitted. Based on the said report, an enquiry was initiated, framing charges against the appellant. The Enquiry Officer found charges proved.

The disciplinary authority, accepting the enquiry report, after affording an opportunity of hearing on the question of punishment, dismissed the

appellant from service on 27.3.1993.

3. Being aggrieved, an industrial dispute was raised by the appellant before the Labour Court, Salem. The Labour Court, after appreciating the

entire evidence, dismissed the industrial dispute, confirming the order of dismissal, by Award dated 05.12.2001.

4. Feeling aggrieved the appellant came up with the writ petition under Article 226 of the Constitution of India before this Court.

5. Admitting the fact that the appellant had collected ticket charges from 25 persons, the learned counsel for the appellant contended before the

writ court that all 25 persons have traveled in a group and the amount was tendered by one person on behalf of all. Tickets could not be issued

before checking inspectors came and seized the invoice. It was further argued that there was no intention to misappropriate the fund, however, for

lack of time, tickets could not be issued before Checking inspectors intercepted the bus. This submission was not considered by the enquiry

officer.

6. The next contention of the learned counsel for the appellant before the learned Single Judge as well as before this court is that passengers were

not examined by the enquiry officer and on the basis of the statements given by them in the presence of checking inspectors and also on the basis

of the statements of the checking inspectors, the allegation had been held as proved. Thus, the finding is perverse and deserves to be quashed.

7. On the question of punishment, it was argued that similarly situated other conductor, namely, Mr.D.Subramanian, was reinstated after dismissal.

Thus, a direction may be issued to the management to consider the case of the appellant/petitioner for reappointment.

8. The learned Single Judge, having examined all facts of the case and legal provisions, held that the appellant/petitioner in his chief examination had

not stated that the invoice was filled up subsequently after the checking was completed as per the dictation of the checking inspectors. Thus, the

contention of the learned counsel that the invoice was filled up subsequent to the checking by the checking inspectors was not accepted. On the

question of non examination of passengers, it was held that the appellant had not denied the charge of collecting money from passengers and also

had not stated that before the invoice was seized, tickets were issued. Thus, it was a tacit approval. On the question of punishment, it was

observed that the punishment was proportionate and as such, no interference was required. On the issue of fact that one D.Subramanian was

reinstated after dismissal, it was observed that it is for the management to reconsider, but the court by judicial order cannot direct the management

to reappoint the appellant on the ground that some other person had been considered and reappointed.

9. Ms.Y.Kavitha, learned counsel appearing for the appellant reiterates her submission as advanced before the learned Single Judge. The main

emphasis of the learned counsel was that passengers were not examined and as such, enquiry was vitiated and the finding was perverse.

10. We have considered the submission of the learned counsel for the appellant, perused the pleadings and documents appended thereto.

11. In the case on hand, the appellant had not denied the fact that ticket amount was collected before issuance of tickets and as such, even if

passengers were not examined, the fact of acceptance of money without issuance of ticket, cannot be disputed. The only question to be considered

is as to whether the appellant had done it deliberately, intentionally or on account of fact that the appellant could not issue the ticket after taking

money for want of time? The normal practice as stated is that collection of money and delivery of ticket would be done simultaneously. If tickets

are not issued and the money is collected even with the assurance that the ticket will be issued subsequently, the gravity of offence is not mitigated.

The appellant has failed to establish his intention of not pocketing the amount.

12. In such a case where an employee is assigned with a job of collection of money, a degree of trust and confidence on employee is more. Even

miscalculation of small amount cannot be ignored. It is well settled proposition of law that the scope of writ jurisdiction against the departmental

enquiry is very limited, only to the extent of finding out whether the enquiry report is based on no evidence or on the basis of extraneous

consideration or the finding is perverse or an opportunity of hearing was not afforded to the delinquent employee. In the instant case, no element of

this nature is available to interfere with the decision of the management, which was tested by the Labour Court as well as in the writ court by the

learned Single Judge.

13. We do not find any flaw or error in the order sought to be impugned before us in the writ appeal. Accordingly, the writ appeal is dismissed.

No costs.