

W.A.(MD)Nos.158 and 159 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 06.07.2023

PRONOUNCED ON: 29.09.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)Nos.158 and 159 of 2013

V.Periyakaruppan

...Appellant in both appeals

/Vs./

1. Tamilnadu State Transport Corporation,
Rep. by its General Manger (Madurai) Ltd.,
By-pass Road,
Dindigul.

...R1 in WA(MD)No.158/2013

...R2 in WA(MD)No.159/2013

2. The Presiding Officer,
Labour Court,
Tiruchirappalli.

...R1 in WA(MD)No.158/2013

...R2 in WA(MD)No.159/2013



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PRAYER in W.A.(MD)No.158 of 2013:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order of the learned Judge dated 10.11.2009 insofar as dismissing W.P.(MD)No.2189 of 2005 filed by the appellant and consequently to allow the writ petition.

PRAYER in W.A.(MD)No.159 of 2013:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order of the learned Judge dated 10.11.2009 insofar as allowing W.P.(MD)No.11337 of 2004 filed by the second respondent and to dismiss the writ petition.

For Appellant : Mr.V.Ajoy Khose (in both appeals)
for Mr.S.Arunachalam

For Respondents : Mr.D.Sivaraman

(R1 in WA(MD)No.158/2013

R2 in WA(MD)No.159/2013)

Labour Court (R2)

(R1 in WA(MD)No.158/2013

R2 in WA(MD)No.159/2013)



COMMON JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

The appellant / petitioner challenges the order of the Writ Court dated 10.11.2009, wherein, the prayer was for quashing of proceedings of the presiding officer Labour Court dated 23.10.2003. The appellant seeks a consequential direction to the Management / R1 in writ petition / Tamil Nadu State Transport Corporation (in short 'TNSTC') to pay backwages and other attendant benefits to him.

2. The appellant / petitioner was a Conductor in TNSTC when bus bearing Reg.No.TN-57-N-0358 of TNSTC was travelling from Trichirappalli to Pazhani on 11.12.1994. Enroute, two checking Inspectors and one Deputy Manager (Traffic) boarded the bus. In Alampattipudur, six passengers boarded the bus and one of them complained that though the Conductor had collected money for the ticket, the ticket was not issued.



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3. He made a written complaint leading to a charge memo

being issued as follows:

“(i) On 11.12.94 while on duty in the route bus Trichy to Palani bearing Regn.No.TN-57-N-0358, for non-issuance of ticket to a passenger after collecting the fare of Rs.21.70, you had misappropriated the sum of Rs.21.70 and thereby caused loss to the Corporation, which attracts punishment vide Standing Order No.16(5) (62) of the Corporation;

(ii) Refusing to sign in the tickets issued to the passenger by the checking inspectors and also refusing to sign in the inspection report as well as the statement of the passenger and thereby disobeyed the orders of the superior officers, which attracts punishment vide Standing Order No.16(2) of the Corporation;

(iii) Refusing to receive the report of the checking inspectors, which attracts punishment vide Stnding Order No.16(31) of the Corporation;

(iv) To support the above cause of yours, you had instructed the driver not to start the bus until your command, which attracts punishment vide Standing Order No.16(4) of the Corporation.”

4. The appellant / petitioner tendered an explanation and an enquiry was conducted leading to his dismissal on 06.04.1995. A dispute



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was raised in I.D.No.50 of 1996 and the question determined was whether the punishment of dismissal from service was too harsh and grossly disproportionate to the nature of the charges. A preliminary award was passed holding that there had been violation of principles of natural justice at the first instance.

5. After due hearing, an award came to be passed, wherein the labour Court modified the punishment into one of reinstatement with continuity of service. The appellant / petitioner was held disentitled to backwages and other attendant benefits.

6. As against the aforesaid award of the labour Court, writ petitions were filed both by the appellant / petitioner as well as TNSTC. The cross writ petitions were taken up together. In an order passed on 10.11.2009, the Writ Court has reversed the order of the labour Court to the extent of the benefit granted to the appellant / petitioner and reinstated the order of dismissal passed by TNSTC.



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7. In summary, the writ petition of the appellant / petitioner was dismissed and that of TNSTC was allowed. It is as against the aforesaid order that the appellant / petitioner has filed the present writ appeals. Mr.Ajay Khose, learned counsel on record for the appellant would assail the order of the Writ Court on multiple grounds. Firstly, he would submit that there are various inconsistencies in the factual matrix as noted in the course of enquiry culminating in the impugned order.

8. The point of embarkation of the six passengers including the complainant was disputed and while the appellant / petitioner would submit that the complainant had boarded at Trichy, it was the case of TNSTC / Checking Inspectors that he had boarded at Alampattipudur Village. The procedure followed by the bus driver was also vitiated that the bus had not been stopped on the curb side as provided for in the Regulations. Despite the checking on-board, the bus continued to travel, contrary to the Regulations in this regard.



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9. The complaint did not contain the address of the complainant and thus, the appellant / petitioner was unable to call upon the complainant and cross examine him. This is a grievous lacuna insofar as the appellant / petitioner has been deprived of an opportunity to establish his case by way of cross-examination, which he could have done, had the complainant's address and conduct details been secured as expected from TNSTC.

10. There are various discrepancies in the statement recorded from the bus driver and the interpretation thereof. While the authorities have concluded that the statement of the driver is adverse to the interest of the appellant / petitioner, in fact, the driver only states that he could not notice what was going on in the bus, since the entirety of the events took place at the back of the bus, while he was driving, and had his eyes on the road.



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10. The Regulations also required the statement of the complainant to have been attested by the driver, which has not been done in the present case. Thus, there are several deficiencies in the procedure followed by the authorities. The impugned order of the learned Single Judge also proceeds on the other charges that had taken place in the past. For this purpose, the appellant / petitioner relied on various judgments of the Hon'ble Supreme Court to the effect that past conduct ought not to be a matter of consideration for the appellate authority.

11. In fine, he would submit that the errors in the procedure, the gross violation of principles of natural justice and the fact that the writ Court has proceeded on the basis of prior charges would vitiate the proceedings in entirety. He would thus pray that writ appeals be allowed in full. Alternatively, and without prejudice to the primary prayer, the appellant would pray that the order of the labour Court be reinstated to the extent of the relief granted by it.



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12. Per contra, Mr.D.Sivaraman, learned counsel appearing for TNSTC would support the order of dismissal as confirmed by the learned Single Judge. He would point to fact that this appellant / petitioner deserves no sympathy from the Court drawing attention to the various instances of dereliction of duty as noted by the learned Single Judge at para 21.

13. The appellant / petitioner's past conduct was thus one which did not justify any leniency to be granted in this regard. He would reiterate that the Checking Inspectors had boarded the bus and followed proper procedure and that the deficiencies pointed out by the appellant / petitioner had been corrected by virtue of the fact that the preliminary award has been set aside on the ground of violation of principles of natural justice.



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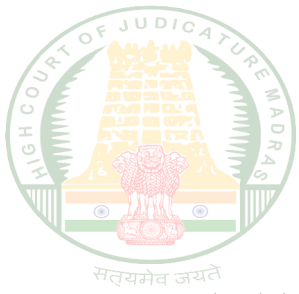
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14. Thereafter, full opportunity had been granted to the appellant / petitioner and there was thus no cause for complaint. The driver of the bus as well as a co-passenger had confirmed the sequence of events speaking to the fact that one of the passengers had paid for the ticket, but had not been issued the same. The deficiency in fare had been ascertained and confirmed when the appellant's bag had been checked.

15. He would urge that the scope of judicial review was limited and that the respondent had established its case beyond the necessary degree of proof. The charges as against the Appellant are also in regard to the refusal to sign in the tickets issued to the passenger by the checking inspectors, refusal to sign in the inspection report and disobeying the orders of the superior officers.

16. He had also refused to receive the report of the checking inspectors and had, further, instructed the driver not to start the bus till he so commanded. The aforesaid behaviour as well as the embezzlement

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had been proved and the writ Court had correctly decided the matters.

Thus there was no necessity or justification to intervene in appeal. He relies on cases to buttress his submissions that we will advert to shortly

17. We have heard rival contentions of the parties and have devoted anxious consideration to the same. The Writ Court has at para 21 summarized the facts of the present case in the following terms:-

21. Keeping the above catena of judgments in mind, the facts of the present case should be looked into. The proved misconduct is that the conductor, having collected the fare of Rs.21.70, did not issue ticket to the passenger and thereby misappropriated the sum of Rs.21.70. The other charges, namely, refusing to sign in the tickets issued to the passenger by the checking inspectors as well as refusing to sign in the inspection report as well as the statement of the passenger; refusing to receive the report of the checking inspectors and also instructing the driver not to start the bus until his command, have also been found to be proved. For the above proved misconduct, conductor deserves the punishment of dismissal. Such an order of punishment imposed by the Corporation should not have been interfered by the Labour Court in exercise of its discretionary power. I find absolutely no reason for the Labour Court to modify the punishment. In this context, we may also refer to the past record of the conductor, which has been taken note of by the



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Corporation to impose the punishment of dismissal on the conductor. In fact the conductor throughout his service in the Corporation had committed various misconducts and particularly in respect of the incidents that had taken place between the periods 12.5.77 and 4.6.94, the conductor had been proceeded with departmental proceedings and was either imposed with the punishment of fine, censure or warning. To name a few, he was imposed with the punishment of fine in respect of an incident that took place on 28.6.77 for not issuing the ticket to a passenger in the bus bearing Regn.No.TMN 5245. He was severely warned for allowing his friends to travel in the bus on 9.10.77 without getting the fare for the journey. He was again warned for the incident on 18.7.79 for non-issuance of tickets to three passengers. He was again warned for the incident on 22.5.80 for allowing a passenger to travel beyond the place for which the fare was collected. He was again inflicted with censure for the incidents between 12.7.81 and 16.11.81 for showing deficit amounts. He was again warned for the incident on 16.5.82 for having recorded lesser collection of fare in the invoice book, even though he had collected full fare. He was again inflicted with censure for the incident on 17.11.83 for not collecting the fare in the bus bearing Regn. No. TML 6410. He was again imposed with the punishment of stoppage of increment for a period of one year without cumulative effect for the incident on 2.9.90 for making corrections in the value of tickets and has misappropriated a sum of Rs. 29.20. He was also suspended for a period of two days for the incident on 17.2.87 at Palani Bus stand for beating the driver.



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18. The Writ Court considered, in detail, the proprietary of, and scope of judicial review, in interfering with a punishment imposed by the disciplinary authority. The judgments of the Hon'ble Apex Court in *Government of India and Another v. George Philip*¹, wherein earlier judgments in *B.C.Chaturvedi v. Union of India*², *Om Kumar v. Union of India*³ and *Damoh Panna Sagar Rural Regional Bank and another v. Munna Lal Jain*⁴ were duly noted.

19. In those judgements, the Court had held that the jurisdiction exercised either by the Tribunal or by the High Court is limited and while exercising power of judicial review, the punishment could not be set aside altogether or substituted unless they find that there has been substantial non-compliance with the Rules of procedure or a gross violation of rules of natural justice, resulting in miscarriage of justice or where the punishment was shockingly disproportionate to the gravamen of the charge.

1 AIR 2007 SC 705

2 1995 6 SCC 749

3 2001 2 SCC 386

4 2005 (10) SCC 84



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20. The Court also refers to the judgment in *Regional Manager, RSRTC v. Ghanshyam Sharma*⁵, where the factual matrix also related to the failure of a conductor to deposit the fare collected with the Transport Corporation. In those circumstances, the Court held that it would be misplaced sympathy to order his reinstatement and that his dismissal ought to have been confirmed. In *Pandiyan Roadways Corporation Ltd. V. Employee P.Murugesan*⁶, the Division Bench held that misappropriation of ticket fare was not a minor misconduct and unless there was sufficient justification, modification of the punishment imposed was not warranted.

21. Based on the findings at para 21, the Writ Court has proceeded to set aside that portion of the award of the Labour Court directing reinstatement with continuity of services, but without backwages and attendant benefits and have upheld the order of the Corporation in dismissing the writ petitioner from service.

⁵ 2002 10 SCC 330

⁶ 2002 3 LLW 570



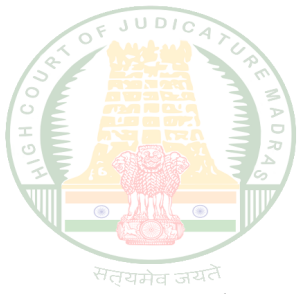
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22. Those judgements apart, Mr.Sivaraman relies upon some decisions on the aspect of judicial review that we elaborate upon now. In *Kuldeep Singh v. The Commissioner of Police and Others*⁷ the Courts have been urged to make a broad distinction between the decisions that are perverse and those that are not. If a decision is arrived at on the basis of no evidence or evidence, which is thoroughly unreliable and no reasonable person would act upon it, such an order would be perverse. However, if there is some evidence on record, which is acceptable and reliable, howsoever compendious it may be, the conclusions would not be taken as perverse and the Court would decline interference with those findings.

23. In *Divisional Manager, Rajasthan, State Road Transport Corporation v. Kamruddin*⁸, the charges were analogous to those in the present case and ultimately the punishment imposed was confirmed on the finding that the misconduct against that employee was proved, as the

⁷ AIR 1999 SC 677

⁸ 2009 7 SCC 552



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domestic enquiry had been found to be conducted in a fair manner and in line with principles of natural justice.

24. In *State of Haryana and Another*⁹, three judges of the Hon'ble Apex yet again reiterated that sufficiency of evidence in proof of the findings by domestic tribunal is beyond scrutiny. While absence of evidence would certainly warrant intervention, the Court cannot step in to test the decree of proof, once it is apparent that there was *some* proof available to the authorities.

25. The rival contentions in regard to the facts of the matter align with the findings of the writ Court at paragraph 21 of its decision. There is no merit in the submission relating to violation of principles of natural justice as the Appellant has been heard in detail prior to passing of the final award. That apart, and incidentally, the writ Court and we, in appeal, have also heard the Appellant in detail. Undoubtedly, the respondent was in possession of some evidence against the appellant.

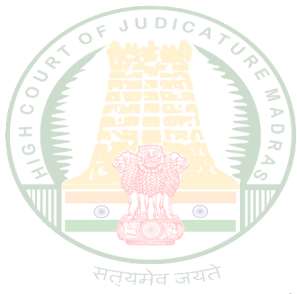
9 1977 2 SCC 491



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26. True, there are some flaws such as the address of the complainant being unavailable and the driver not really deposing adverse to the Appellant. However, we do not believe that consideration of the aforesaid factors would lead us to any different conclusion from that of the writ Court. The Appellant has been unable to disturb the factual matrix recorded at para 21 of the writ court and thus, the weight of precedent, to the effect that Courts will be circumspect in the matter of judicial review, tips the balance in favour of the respondents.

27. The Writ Court has, in addition, also taken note of past conduct of the writ petitioner in relation to various incidents between 12.05.1977 and 04.06.1994. The incident in question took place on 11.12.1994. At para 22, the Writ Court states that *'punishment of dismissal is not in any way disproportionate to the charges levelled against the Conductor, particularly taking into account the past record of service'*. We have been addressed specifically on this point and have



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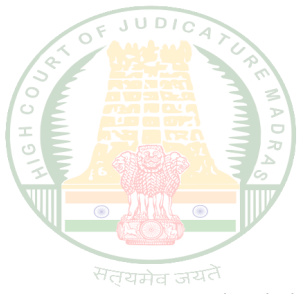
noted the judgments of the Supreme Court and High Courts in this regard.

28. Mr.Khose would argue that past conduct has no place in matters like the present and the writ Court should have restricted itself only to consideration of the events of 11.12.1994. That incident, apart from alleging misconduct alleged embezzlement of such a trivial sum that the punishment of dismissal was grossly disproportionate. Mr.Sivaraman, for his part, would argue that the conduct of an individual must be assessed wholistically and taking note of his actions over a period of time.

29. That apart, insubordination of an employee was considered in *Mahindra and Mahindra Ltd. v. N.B.Narawade*¹⁰ where the Court held that use of abusive language against a superior officer by an employer amounted to indiscipline. In *Baidyanath Mahapatra v. State of Orissa*¹¹, four Judges of the Hon'ble Supreme Court decided an appeal from the

¹⁰ 2005 3 SCC 134

¹¹ 1989 AIR SC 2218



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decision of the Orissa Administrative Tribunal dismissing the appellant's suit challenging his premature retirement from service.

30. This decision is locus classicus for the proposition that past record or conduct should not weigh with the authority while either confirming or rejecting appeals against disciplinary proceedings. In that case, recommendations of the review committee span the period 1969-1970 to 1982-1983. The specific question that was decided was whether the review committee was justified in making recommendations on the basis of adverse entries awarded in the remote post especially when the appellant had been promoted in the intervening period.

31. The role of the Review Committee was to determine his suitability for retention in service in accordance with Orissa Service Code. The Court held that when the government servant had been promoted to higher posts on the basis of merit and selection, adverse entries contained in the service records lose their significance as they remain part of past history.



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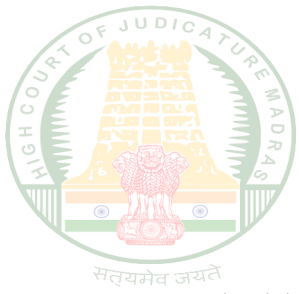
32. That judgment has been followed by a Division Bench of this Court in *G.Gomathi v. The Management, Rep. by the Managing Director, Tamil Nadu State Transport Corporation (Madurai Division-I) Ltd.*,¹² allowing the writ appeal on the ground that the writ Court had exceeded the power of judicial review.

33. In *U.P.State Road Transport Corporation v. Suresh Chand Sharma*¹³ in a similar situation, where the passengers of that bus had been found without tickets, the Court considered various judgments to reverse the order of the High Court that had accepted the plea of that employee. They also considered a plea on behalf of the employee that for embezzlement of such a petty amount, dismissal would not be justified. In that context, they state that it does not the amount embezzled that is relevant but the mens rea to misappropriate public money.

34. We agree that past conduct would have limited application in deciding disciplinary proceedings as the charges would have to be

¹² WA(MD)No.378 of 2011 dated 25.11.2021

¹³ 2010 6 SCC 555

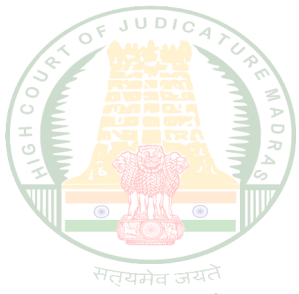


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decided based on the allegations made at the relevant point in time and the evidence gathered. However, they cannot be brushed aside altogether in a case such as the present. We are of the considered view that the judgement in *Baidyanath Mahapatra* turns on a different and distinguishable factual position.

35. In the case of *Baidyanath Mahapatra*, the Court was considering the retention of the employee in service and hence held that since he had been promoted in the interim after certain acts for which he had faced disciplinary proceedings, those very acts had lost their significance. There was a positive action by the employer post the lapses committed by the employee by which those lapses/offences pale into insignificance.

36. The position in the present case is distinguishable. The admitted facts are that the Appellant has been charged and found guilty on multiple occasions in the course of his service for the same/similar



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lapses. The instances are narrated at para 21 of the order of the Writ Court extracted at para 17 above. Thus, one cannot close one's eyes to the conduct of the employee over the years and completely ignore the earlier identical instances of dereliction of duty.

37. While those instances might not have a direct impact on the decision of the authority and Court in specific proceedings, they will, in our view, have a bearing in the matter as such a decision cannot be sanitized in totality and decided in a vacuum. In light of the discussion as above, we confirm the order of the Writ Court and dismiss both appeals. Miscellaneous petitions closed. No costs.

[A.S.M.J.] & [R.V.J.]
29.09.2023

NCC :Yes/No
Index :Yes/No
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Pre-delivery Common Judgment made in
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Dated:
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