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Court : Chennai

Decided On : Mar-07-2012

Judge : K.Chandru, J.

Acts : Industrial Disputes Act - Section 33(2)(b); [Constitution of India](#) - Article 226

Appeal No. : W.P.No.16130 of 2007

Appellant : The Management.

Respondent : The Joint Commissioner of Labour.

Advocate for Pet/Ap. : Mr.P.Paramasiva Doss, Adv.

Judgement :

Prayer : Petition under Article 226 of the [Constitution of India](#) praying for a Writ of Certiorari to call for the records of the 1st respondent in Approval Petition No.221/04 dated 14.12.2005 and quash the same.

ORDER

1. The petitioner is a State owned Transport Corporation having Headquarters at Vellore. In this Writ Petition, they have come forward to challenge an order passed by the 1st respondent Joint Commissioner of Labour (Conciliation) in Approval Petition No.221 of 2004 dated 14.12.2005. By the impugned order, the 1st respondent declined to grant approval for the dismissal against the 2nd

respondent dated 14.4.2004.

2. The Writ Petition was admitted on 17.4.2008. Pending the Writ Petition, this Court granted interim injunction subject to the condition that the petitioner Corporation shall pay the last drawn wages to the 2nd respondent starting from April 2007 and continue to pay till the disposal of the Writ Petition. Since the petitioner has not filed the documents made available before the 1st respondent authority, this Court summoned the records from the 1st respondent. Accordingly, records were received by the Registry and circulated for perusal by this Court.

3. It is seen from the records that the 2nd respondent was employed as a Conductor on the relevant date, namely 6.2.2003 when he was proceeding in the Route No.75-B from Vellore to Pallikonda. The contention of the 2nd respondent was that there were two passengers, who proceeded from Vellore to Pallikonda and brought two Oil Cans and the 2nd respondent issued a luggage ticket in respect of each tin. However, when the Checking Inspector got to enter into the bus, the two passengers, who lost the luggage ticket, informed him that they had only passenger ticket and not luggage ticket. The Checking Squad found the irregularity and issued irregularity report. Statement also obtained from the passenger in which the counter signature of the workman was not obtained.

4. On the basis of the irregularity report, the workman was given a charge memo stating that he failed to issue two luggage tickets in respect of two passengers and also misappropriated the Corporation funds. The workman gave his explanation denying the charges. In the explanation, he had stated that he has already issued two luggage tickets and in the invoices there is no separate entry column for making entry about the luggage ticket and at the relevant time, there were only 54 passengers and all of them were having ticket. Notwithstanding the same, the enquiry was ordered to be conducted.

5. In the enquiry, the checking staff were examined. In cross-examination the management witness fairly submitted that the signature of the Conductor was not obtained in the Irregularity Report as well as in the alleged complaint given by the passenger. It was also admitted that the cash bag was not checked at the relevant time. Though the explanation was offered that the bus was overcrowded, but it is

the stand of the management that there were 54 passengers in the bus and therefore it is not a overcrowded bus.

6. The enquiry officer, notwithstanding these facts held that the charges levelled against the 2nd respondent were proved. On the basis of the proved charges, a second show cause notice was issued on 18.10.2003. In the second show cause notice, it was stated that for the proved charge, the workman is entitled for a severe penalty and also they further stated that his past conduct was not satisfactory and it was sought to be listed out. From a perusal of the office copy found in pages 33 and 34 of the typed set of papers, no such past conduct was listed though it is mentioned in the preamble that they have appended the past conduct of the workman. The workman gave explanation on 3.12.2003. Notwithstanding the explanation, the dismissal order came to be issued on 14.4.2004.

7. Curiously, in the dismissal order, they had listed as many as 26 previous penalties undergone by the workman starting for the period from 1987 to 2004. Since at the relevant time the Conciliation Proceedings were pending before the Commissioner of Labour, an approval petition was filed under Section 33(2)(b) of the Industrial Disputes Act seeking approval of the dismissal of the workman. The said application was transferred to the 1st respondent. The authority assigned the same as Approval Petition No.221 of 2004 and issued Notice to the workman.

8. The workman filed counter statement dated 4.11.2005. The management filed the enquiry proceedings before the authority. The authority in the impugned order held that the amount of one month pay correctly reflects the last drawn wages and there was no infirmity in the offering of one month pay in lieu of Notice. With reference to simultaneous filing of the application, the authority found that this forms part of same transaction.

9. With reference to unfair labour practice, there are no evidence to show that the workman was particularly victimized by the action. On the question of fairness of the enquiry, the authority did not find any infirmity in the enquiry conducted. But, however, on the question of finding rendered by the enquiry officer as well as the infirmity in the second show cause notice, the authority recorded as follows: The

first issue to be decided is whether a proper domestic enquiry in accordance with the relevant rules/standing orders and principles of natural justice has been held. Exhibit A-1 is the basic report of the checking inspector based on which the Opposite Party was issued the charge sheet Exhibit A-3. The Opposite Party had replied to this charge sheet through Exhibit A-4, Exhibit A-6 is the proceedings of the enquiry into the charges framed against the Opposite Party. A perusal of Exhibit A-6 indicates that the enquiry was conducted in the presence of the Opposite Party, that the witnesses to substantiate the charges were examined in the presence of the Opposite Party and he was given an opportunity to cross examine the witnesses and to examine witnesses on his behalf. The Opposite Party had contended that the Applicant had not indicated in the second show cause notice issued to him the past record of his service but in the final order of dismissal had enumerated the past punishments imposed on the Opposite Party for his misconduct and the punishments imposed therefor and therefore the Opposite Party was denied an opportunity to explain the same. A perusal of the second show cause notice marked as Exhibit A-10 indicates that the past record of service of the Opposite Party is not enumerated in it. However, in the final orders dismissing the Opposite Party from its services marked as Exhibit A-12 the Applicant had enumerated and relied on the past record of service of the Opposite Party to dismiss him from service. This is a clear violation of the principles of natural justice. Therefore, I hold that the disciplinary action initiated against the Opposite Party and which resulted in his dismissal was not conducted according to the principles of natural justice and the standing orders. For this reason, the approval sought for has to be refused. The next issue to be decided is whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out. In his counter the Opposite party had put forth several points to contend that a prima facie case was not made out before the Enquiry Officer. I have perused the findings of the Enquiry Officer which is marked as Exhibit A-7. The Enquiry Officer had relied on the statement of the checking inspector who conducted the check and the statement of the passenger which is marked as Exhibit A-18. Exhibit A-18 does not contain the signature of the Opposite Party. The checking inspector had also not obtained the signature of the other checking inspector who was with him at the time of the check. The statement

of the passenger does not also contain the signature of any other passenger who traveled in the same bus. The signature of the driver of the bus was also not obtained in Exhibit A-18. The checking inspector who was examined as a witness for the management in the enquiry had stated that the Opposite Party who was the Conductor of the bus refused to sign in the Exhibit A-18. But this refusal to sign by the Opposite Party was not recorded in the report given by the checking inspector to the management. The Enquiry Officer had failed to consider all these aspects while holding that the charges are proved. Therefore, I find that the Enquiry Officer had failed to consider the evidence before him while holding that the charges are proved. As the Enquiry Officer had not considered the evidence before him when holding that the charges are proved, his findings have to be held to be perverse. For this reason the approval sought for had to be refused. On these two grounds, the Approval Petition was refused. Challenging the same, as noted already, the Writ Petition came to be filed.

10. The contentions raised by the management were that the 2nd respondent's making oral statement cannot be a ground to dislodge the findings recorded in the enquiry and there was no necessity to consider the past records as it was a case of misappropriation. As far as the last contention is concerned, it is not always relevant to consider past records even though the Standing Order may provide for such contingency and such a fact has already been upheld by the Supreme Court vide judgment in Pandiyan Roadways Corporation Vs. N.Balakrishnan (2007 (9) SCC 755).

11. In the present case, the petitioner Corporation in the impugned order incorporated the past record of service as another factor to consider the question of inflicting the punishment. But, in the second show cause notice, there is no such detail given. On the other hand in the final order, as noted already, they have set out as regards 25 incidents, the victimizing part of the past record, which weighed with the Corporation before the imposition of final penalty. Therefore, the authority was correct in saying that once the Corporation intends to take note of such past record but not intimated the same in the second show cause notice issued to the workman with reference to the past record. Certainly the authority's finding that principles of natural justice have been violated cannot be found fault with.

12. The other contention regarding the perversity of the finding, the authority was correct in stating that the cash bag was not checked by the checking staff and the reason given by them was not acceptable since at the relevant date, the bus was not a crowded bus. Secondly, the explanation offered by the workman was not considered. In the absence of clinching proof against the workman, the charge that he has misappropriated the amount cannot stand to reason. Even when the petitioner Corporation stated that there was loss to the Corporation, they have not mentioned the quantum of loss either in the charge memo or in the final order.

13. Under the circumstances, considering the scope of examining the order under Section 33(2)(b) of the Industrial Disputes Act, it cannot be said that the 1st respondent failed to discharge his duty in passing the impugned order. Hence, the writ petition stands dismissed. However, there will be no order as to costs.

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