

(1998) 11 MAD CK 0129
In the Madras High Court

G. Ganesamoorthy

APPELLANT

Vs

The Presiding Officer, I Additional Labour Court and Others

RESPONDENT

Date of Decision : 18-11-1998

Acts Referred:

Citation : (1999) 1 MLJ 532 : (1999) WritLR 19

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Division Bench

Judgement

M. Karpagavinayagam, J.—This writ petition is filed by the petitioner before this Court seeking to issue a writ in the nature of certiorarified

mandamus calling for records from the respondent relating to the dispute in I.D.No. 378 of 1986 and quash the same and direct the second

respondent, the Management of Sri Balu Transport, Pattukottai, to reinstate him in service with backwages, continuity of service and other

attendant benefits.

2. The facts that are required for the disposal of the writ petition are as follows:

The petitioner joined as a conductor on 1.1.1982 in the services of the second respondent. On 1.3.1985, he was asked to work in the third

respondent, since the third respondent is the sister concern of the second respondent. On 5.8.1985, when he was on duty in the Bus No. TNO.

5227 running between Kumbakonam and Pattukottai, the Checking Inspectors stopped the bus and checked. After checking, it was found that out

of 69 passengers tickets were issued only to 64 passengers and the balance 5 passengers were issued old tickets by the petitioner. With reference

to this a report was prepared on the spot and the same was signed by the petitioner. The Enquiry Officer by the report dated 20.2.1986

concluded that the charge was proved against the petitioner. On 24.2.1986, a show cause notice was issued to the petitioner as to why his services should not be terminated on the basis of the report of the Enquiry Officer. The petitioner gave a reply dated 1.3.1986. But having not satisfied with the said reply, the petitioner was dismissed from service by the management by order dated 15.3.1986. With reference to this, when an industrial dispute was raised through the petition dated 26.5.1986, the first respondent, the Presiding Officer, Labour Court, Madras conducted a full-fledged enquiry and passed an Award on 10.1.1990 upholding the report of the Enquiry Officer and held that the termination of the petitioner from service is justified. This impugned award of the first respondent is being challenged in this writ petition.

3. Though the learned Counsel appearing for the petitioner, would raise several points attacking the award of the first respondent with reference to the findings relating to the charges initiated, at the end, he confines himself to the point that the punishment of dismissal from service is disproportionate to the nature of the charges levelled against the petitioner. According to him, even assuming that the charge levelled against the petitioner has been proved, the punishment of dismissal does not commensurate to the nature of the charge levelled against the petitioner and the value of the said 5 old tickets comes to only Rs. 5 since the value of one ticket is being Rs. 1 and dismissing a poor employee for the alleged attempted misappropriation of Rs. 5 is totally disproportionate to the charge levelled against him.

4. The counsel for the second respondent, though entered appearance by filing vakalath in this writ petition, has not appeared before this Court.

Though the vakalath was filed on behalf of the second respondent in January, 1991 itself, he did not think it fit to file counter-affidavit on behalf of the second respondent till date.

5. I have carefully considered the submissions made by the counsel for the petitioner and also gone through the affidavit and other records.

6. Relating to the factual finding with reference to the proved charge levelled against the petitioner, either in the enquiry report or in the reasonings given in the award passed by the first respondent, I do not find any perversity. As pointed out earlier, the learned Counsel for the petitioner also

was not able to make out much with reference to the said aspect. However, the grievance expressed by the counsel for the petitioner is that the

first respondent did not give proper reasonings to hold that the punishment of dismissal from service is not disproportionate to the nature of the

charge, namely, attempted misappropriation of Rs. 5. He would also cite various authorities, such as, (1) National Textile Corporation (Mah.

North) Ltd. Vs. Gurunath Vithal Tamase and others, ; (2) Vodaya Babu Shetty Vs. Digvijay Spinning and Weaving Mills and others, and (3) The

President, Cholan Pokkavarathu Kazhagam, Madras Vs. The Presiding Officer, Industrial Tribunal, Madras and Another, .

7. The principles that could be deduced from the perusal of these judgments are that before imposing the punishment of dismissal from service,

being extremely harsh, the tribunal and the court have necessarily to see whether the same is proportionate or commensurate to the misconduct or

the offence that the worker had committed.

8. This is a case where, the petitioner had issued 5 old tickets to 5 passengers in order to commit the misappropriation of Rs. 5, thereby attempted

to cause loss to the management. In my view this has been clearly proved by the report of the Checking Inspector and the evidence given by the

witnesses before the Enquiry Officer and even the report prepared by the Checking Inspector pointing out the the misconduct committed by the

petitioner was signed by the petitioner. Even according to the Checking Inspector, the petitioner was asked to issue fresh tickets to those 6

persons. Therefore, it has been clearly established that the petitioner attempted to commit the act to cause wrongful loss to the management, which

was timely detected and prevented by the Checking Inspectors.

9. But, the question here is whether such a misconduct committed by the employee should be punished with the sentence of economic death by

dismissing him from service. Certainly, the act committed by the petitioner is a misconduct. But, it shall be considered as to whether it could be said

that the dismissal from service only would be a proportionate punishment to the said misconduct committed by the petitioner. There shall be a

definite punishment so as to make him to feel the pinch of the the mistake committed by him. The punishment shall be such to make the employee

to feel that what he has done is not proper. In the light the facts of this case, it

could be concluded that the misconduct is not so serious as to entail the punishment of sentence of economic death.

10. In a similar circumstance, the Division Bench of this Court in *The President, Cholan Pokkuvarathu Kazhagam, Madras Vs. The Presiding Officer, Industrial Tribunal, Madras and Another*, has considered this point and set aside the award and remanded the matter for imposing proper punishment. In the said case, the charge against the conductor was that he did not issue 18 tickets and 2 half tickets of all 40 paise denomination in the bus. It was submitted before the tribunal that the dismissal of the conductor for the alleged charge of misappropriation of the amount by failure to issue tickets to the passengers was excessive. This submission was rejected by the tribunal in the following words:

As regards punishment, as it is a serious misconduct of misappropriating the corporation's amount, the punishment of dismissal is correct.

When this award was questioned in the writ petition before the learned single Judge of this Court, the writ petition was dismissed by making the following observations:

Even on the question of punishment, the tribunal has clearly stated it is a serious misconduct of misappropriation and that therefore the punishment is correct. In the circumstances, there is nothing for this Court to interfere in exercise of power under Article 226 of the Constitution.

11. Against that order of the learned single Judge, the conductor/petitioner therein filed a writ appeal before the Division Bench. The said decision of the Division Bench was reported in *The President, Cholan Pokkuvarathu Kazhagam, Madras Vs. The Presiding Officer, Industrial Tribunal, Madras and Another*, . According to the Division Bench of this Court, there is a power to interfere with the punishment and alter the same, conferred on the tribunal and that Section 11-A was brought in because of the felt needs of the time and this benevolent power must be exercised in the spirit in which the provision had been enacted. Ultimately, the award was set aside and remanded back for deciding the said aspect of punishment. The relevant observation is as follows:

There has got to be an independent advertence to all the relevant materials and aspects exposed in the case to find out the justification or otherwise for the non-employment of the workman and further more, there has got to be a

consideration of the question as to whether the punishment imposed is proper on the facts and circumstances of the case. There is a complaint that the past record of service of the workman was not at all looked into on the question of punishment. No room for such complaint ought to have been given. We find that the first respondent did not adhere to the well-accepted principles of adjudication of questions like the present one and this feature obliges us to interfere in writ appeal.

12. In the light of the guidelines given by the Division of this Court, when the impugned award is perused, I am of the view that the first respondent, while holding that the dismissal from service does commensurate with the act committed by the petitioner has not followed the principles given by this Court. The reason given by the first respondent is as follows:

13. Thus, the only reason given in para 7 of the award is that in the event of the misappropriation, the management would suffer loss and that the said misconduct would even attract I.P.C. offence.

14. As indicated above, there is no consideration about the past records of the service of the workman while considering the question of punishment. On the other hand, future event alone is taken into consideration. So, in these circumstances, I am of the view that the award shall have to be set aside and remanded back to the first respondent to consider this aspect alone, namely, whether the punishment of dismissal from service is proportionate to the charge levelled against the petitioner, since I am of the view that the finding regarding the proof of the charge was Valid and proper.

15. Since the counsel for the second respondent is absent, this Court is unable to get the view of the management with reference to this. Therefore, the first respondent, while considering the said question for which the matter has been remanded, shall hear both parties after notice and pass orders in accordance with law. However, it is made clear that the first respondent may take his own decision after hearing the parties, uninfluenced by any of the observations made by this Court.

16. In the result, the writ petition is allowed and the matter is remanded to the lower court, as observed above. No costs.