

(2001) 01 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No"s. 619 of 1995 and W.M.P. No"s. 930, 8792 and 8793 of 1995

Jeeva Transport Corporation Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Citation : (2000) 84 FLR 580 : (2001) 1 LLJ 1547

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : R. Subbaiah, for the Appellant; K.V. Shanmuganathan, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The petitioner has challenged the award of the first respondent, dated June 3, 1994 made in I.D. No. 340 of

1992 holding that the non-employment of the second respondent was not justified and therefore he should be reinstated with all back wages and

continuity of service.

2. Though very many contentions have been raised by the petitioner attacking the main award, having regard to the settled legal position namely,

that an employee cannot be proceeded against outside the provisions of the Standing Orders applicable to the establishment, there is no scope for

considering the case of the petitioner in this writ petition. In this context, reference can be made to the order of the dismissal Exhibit M-12, dated

September 16, 1989, in which it specifically stated that the second respondent was proceeded against having regard to the misconduct committed

by him, under Clause 15(c) of the Model Standing Orders applicable to the

petitioner establishment.

3. Clause 15(c) of Model Standing Orders reads as under:

theft, fraud or dishonesty in connection with the employer's business or property.

4. The allegation against the second respondent was that on October 9, 1988 around 11.30 P.M., he was attempting to smuggle out sandalwood

logs in Standard 20 van along with another individual, and that when Forest Ranger attempted to confront him the second respondent escaped

from the scene of occurrence. The said conduct was the basis for the issuance of chargesheet as well as the ultimate order of dismissal, dated

September 15, 1989, under Exhibit M-12.

5. Even assuming that the charge of theft if proved, would amount to a conduct involving moral turpitude, the clause relating to such misconduct as

found in Clause 15(x) which reads as under:

Conviction by any Court of law for any Criminal offence involving moral turpitude"".

Disclose that the delinquent employee can be proceeded against and dealt with by imposing a punishment in the event of the said employee having

been found guilty of such offence and also convicted by the Court of Law. In the case on hand, admittedly, the second respondent was acquitted

of the charges levelled against him by the Criminal Court in Case No. 63 of 1990, dated September 15, 1989, as disclosed by Exhibit W-3. In

such circumstances, there is also no scope for converting the charge levelled against the second respondent from Clause 15(c) to one under Clause

15(x).

6. In such circumstances the question remained as to whether the punishment imposed by the petitioner can be held to be validly made. In this

context, a Division Bench judgment of our High Court J. J. Dhanraj Vs. Tamil Nadu Electricity Board and Others, can be usefully referred to

wherein the judgment of the Hon''ble Supreme Court reported in 1984 (1) L.L.N. was relied upon. The relevant passage of the judgment of the

Hon''ble Supreme Court referred to reads as under at p. 934 of LLJ:

5.....In short, it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be

enumerated in the relevant Standing Order is nonetheless a misconduct not

strictly falling within the enumerated misconduct in the relevant Standing

Order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Sri Shanti Bhushan that some other act of

misconduct which would per se be an act of misconduct though not enumerated in Standing Order 22 can be punished under Standing Order 23

must be rejected.

7. Applying the above stated principles, the Division Bench was pleased to quash the very charge-memo issued to the petitioner in that case. In the

case on hand, the charge levelled against the second respondent was under Clause 15(c) of the Model Standing Orders. A reading of the said

clause discloses that the same would not fit into the allegations levelled against the second respondent. Even assuming that the conduct of the

second respondent could be brought within the fold of Clause 15(x), having regard to the Criminal Court verdict under Exhibit W-3, there is no

scope for sustaining the action of the petitioner against the second respondent herein. As the very basis for initiation of the disciplinary action

against the second respondent has no nexus to stand, there is no scope for interfering with the award impugned in this writ petition. The writ

petition fails and the same is dismissed. No costs. Consequently, the connected W.M.Ps. are also dismissed.