

(2004) 02 MAD CK 0135

In the Madras High Court

Case No : Writ Appeal No's. 1476 and 1477 of 2001

N. Mylsamy and P. Selvaraj

APPELLANT

Vs

Cheran Transport Corp. Ltd. and The Presiding Officer, Labour
Court

RESPONDENT

Date of Decision : 09-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2004) 101 FLR 963 : (2004) 2 LLJ 962 : (2004) 2 MLJ 198

Hon'ble Judges : N. Dhinakar, J;D. Murugesan, J

Bench : Division Bench

Advocate : D. Hariparanthaman, for the Appellant; R. Parthiban and Labour
Court, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The appellant in W.A. No: 1476 of 2001 was a conductor in the respondent Corporation since 20.06.1975. He was on

duty on 14.09.1991 in the bus belonging to the respondent Corporation plying between Manjur to Coimbatore. When the bus was checked at

7.30 p.m. at Athikadavu by the officials of the respondent Corporation, it was found that the appellant had collected Rs.2.40 towards ticket fare

for the distance between Kethai and Athikadavu from 22 passengers; for 3 passengers he had issued appropriate tickets, however, for the

remaining 19 passengers he had issued tickets of Rs.1.40 instead of Rs.2.40. According to the officials of the respondent Corporation, the

appellant had collected Rs.2.40 from the rest of the 19 passengers also. It was also found that the appellant has not filled the invoice regarding the

collection of fares before the next stage. Hence, a charge memo dated

16.09.1991 was issued to the appellant calling upon his explanation.

Appellant, though submitted his explanation, did not refute the charges in full. An amended charge memo dated 08.10.1991 was also issued to the appellant.

2. Not satisfied with the explanation, an enquiry was ordered. On behalf of the respondent Corporation one witness was examined and on behalf of the appellant he himself was alone examined. The Enquiry Officer submitted his report dated 31.12.1991 holding that the charges are proved.

The Enquiry Officer took note of the fact that though a witness was examined on the side of the management, he was not cross examined by the

appellant. The management witness had specifically stated that the appellant had collected Rs.2.40 from 19 passengers but had issued Rs.1.40

tickets only. In view of the above statement, the enquiry officer came to a definite conclusion that it was a case of misappropriation and ultimately

found that the charges were proved. Based upon the report of the Enquiry Officer, the appellant was removed from service.

3. Questioning the same, the appellant raised a dispute before the Labour Court, Coimbatore, in I.D. No:285 of 1994. The Labour Court, on the

basis of appreciation of the facts, came to the conclusion that the respondent Corporation ought to have accepted the explanation offered by the

appellant that the endorsement on the tickets as Rs.1.40 was only a mistake and ought not to have imposed a punishment of dismissal. Holding so,

the Labour Court ultimately, by exercising its discretion u/s 11A of the Industrial Disputes Act, modified the punishment into one of reinstatement,

but without back wages.

4. Questioning the said award, the respondent Corporation approached this Court invoking Article 226 of the Constitution of India. By order

dated 02.08.2001 the learned single Judge set aside the award on the ground that the Labour Court has not properly exercised the discretion

conferred on it u/s 11A of the Industrial Disputes Act. The learned single Judge had in fact gone into the question of misappropriation and found

that the charges were proved and had also applied series of judgments of the Apex Court holding that the Courts should not show uncalled for

sympathy by interfering with the punishment of dismissal in respect of proved misconduct.

5. Aggrieved by the said order, the appellant is before this Court. We have heard at length Mr. D. Hari Paranthaman, learned counsel appearing

for the appellant workman and Mr. R. Parthiban, learned counsel appearing for the respondent Corporation.

6. It is the submission of Mr. D. Hari Paranthaman that it is a case of mistake in making endorsement on the ticket as Rs.1.40 instead of Rs.2.40. It

is his further submission that the Labour Court has correctly appreciated the evidence and had come to the conclusion that it is a case of mistake

and such appreciation of evidence cannot be re-appreciated by this Court by exercising the extra ordinary jurisdiction under Article Lakshmi

Precision Screws Ltd. Vs. Ram Bahagat,].

7. Contraverting the above submission, Mr.V.Parthiban, learned counsel appearing for the respondent Corporation would submit that it is a clear

case of misappropriation. In support of his contention he drew our attention to the evidence of M.W.1 who was examined before the Enquiry

Officer. We perused the said statement which is very categorical in as much as that the appellant having received Rs.2.40 per ticket made

endorsements as Rs.1.40 in each ticket and misappropriated Rs.1/- per ticket and in all Rs.19/- for 19 passengers. This specific statement of

M.W.1 was not controverted as M.W.1 was not even cross examined by the appellant. Strangely also we find that the appellant had refused to

cross examine M.W. 1 for the reasons best known to him. This statement of M.W.1 was the basis for the Enquiry Officer to come to the

conclusion that the appellant, after collecting Rs.2.40 from each of the 19 passengers had issued tickets worth Rs.1.40 only to all the 19

passengers and thereby misappropriated a sum of Rs.19/- in all from 19 passengers. This finding of the Enquiry Officer has not at all been taken

into consideration by the Labour Court. Moreover, we find no discussion by the Labour Court to hold that the appellant did not collect Rs.2.40

from each of the 19 passengers and in the absence of such finding, we do not find any reason as to how the Labour Court had come to the

conclusion that it is not a case of misappropriation and but is only a case of mistake. The finding that it is a case of mistake is not supported by any

material.

8. Law is well settled that the exercise of discretion conferred u/s 11A of the

Industrial Disputes Act is not automatic but it should be exercised

with sufficient reasons. In the absence of any reason to come to the conclusion that it is a case of mistake, the exercise of discretion to modify the

punishment cannot be considered as a proper exercise of discretionary powers conferred u/s 11A of the Industrial Disputes Act.

9. In this context, it would be relevant to quote the following judgments :

I. 2001 (1) L.L.N. 893 [Karnataka State Road Transport Corporation vs. B.S. Hullikatti] and

II. 2003 (3) L.L.N. 734 [Management of Mahakavi Bharathiar Transport Corporation Ltd. Uthagamandalam vs. The Presiding Officer, Labour

Court, Coimbatore, and another]

10. The apex Court in the case of Karnataka State Road Transport Corporation vs. B.S. Hullikatti, cited supra, while considering the case of a

conductor who had collected Rs.2.25 from each of the 35 passengers but had issued tickets of the denomination of Rs.1.75 only, held as follows :

5. On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from

as many as 35 passengers. We are informed that the respondent had been in service as a conductor for nearly 22 years. It is difficult to believe that

he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into

account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of *res ipsa*

loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35

passengers could only be to get financial benefit by the conductor. This act was either dishonest or was so grossly negligent that the respondent

was not fit to be retained as a conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

6. It is misplaced sympathy by the Labour Courts in such cases when on checking, it is found that the bus conductors have either not issued tickets

to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be

charged. It is the responsibility of the bus conductors to collect the correct fare from the passengers and deposit the same with the Company. They

act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

On the facts of this case there is no dispute that the appellant had made an endorsement on the tickets issued to 19 passengers out of 22

passengers indicating that he had collected Rs.1.40 only from each of the passengers. The evidence of M.W. 1 would go to show that the

appellant had in fact collected Rs.2.40. In the absence of any contra evidence the principle of *res ipsa loquitur*, namely, the facts speaks for

themselves is applicable to the instant case.

11. In the circumstances the question of sympathy as extended by the Labour Court is not appreciable.

12. Coming to the power of the Tribunal to exercise the discretion u/s 11A of the Industrial Disputes Act, useful reference can be made to the

judgment of the Apex Court reported in 2003 (1) L.L.N. 843 (Regional Manager, Uttar Pradesh State Road Transport Corporation, Etawah and

others vs. Hoti Lal and another). In fact, an interference over the order of dismissal was set aside by the Apex Court by restoring the order of

dismissal on the ground that when the misconduct is proved and the charges are very serious invoking Section 11A of the Industrial Disputes Act,

without material, cannot be permitted.

13. The same view has been taken by a Division Bench of this Court in the judgment reported in 2003 (2) L.L.N. 642 (V.Kasi vs. Pandian

Roadways Corporation Ltd. Madurai and another). Considering the scope of Section 11A of the Industrial Disputes Act, one of us (D.

MURUGESAN, J.) in the judgment reported in 2002 (3) L.L.N. 570 held that misconduct amounting to misappropriation of ticket fare cannot be

considered as minor misconduct and in that event power exercised by the Labour Court to modify the punishment, without acceptable reasons,

cannot be sustained.

14. As we have indicated already, there is no finding by the Labour Court that the appellant has not collected Rs.2.40 per ticket and the

endorsement was only a mistake. In the case of a conductor dealing with passengers, entrusted with the responsibility of issuance of ticket and

collecting fare, collection of fares without corresponding entry in the endorsement would amount to misappropriation, and should be dealt with

severely. In this case, in the absence of an acceptable explanation that it is a only a mistake and the fact that the appellant had made an

endorsement of Rs.1.40 and coupled with the fact that he has not entered the same in the invoice would speak for his misconduct or

misappropriation.

15. In that view of the matter, we find no merit to interfere with the order of the learned Single Judge in setting aside the award and confirm the

order of dismissal.

16. The appellant in writ appeal No: 1477 of 2001 is also a conductor in the respondent corporation appointed on 28.02.1986. While he was on

duty on 09.08.1987, just one year after the date of his joining service, on the route to Manjur to Coonoor he was found that as against 30

passengers present in the bus only 29 passengers were issued with the tickets. When the person who did not have the ticket was interrogated, it

was revealed that he was one of the group of three passengers who travelled from Manjur to Coonoor; that they had paid Rs.11.10 for three

passengers, but only two tickets were issued for travel from Manjur to Coonoor and one ticket was issued for travel from Manjur to Bengal

Mattam. Fare for travel from Manjur to Coonoor is Rs.3.70 and the fare from Manjur to Bengal Mattam is Rs.1.00. On the ground that the

appellant had misappropriated Rs.2.70, an enquiry was initiated and ultimately , the appellant was dismissed on 3.11.1987.

17. On a challenge, the Labour Court, in exercise of its power u/s 11A of the Industrial Disputes Act, ordered reinstatement without backwages. It

must be pointed out that the dispute was raised by the appellant after a period of six years and five months from the date of the order of dismissal.

The Corporation questioned the said award of the Labour Court and the learned single Judge of this Court allowed the writ petition and set aside

the award. Hence, this writ appeal by the appellant / workman.

18. The facts of this case is no more better than the case of the appellant in W.A. No: 1476 of 2001 and in considering the case of the appellant

therein we have held that in a matter of misappropriation of fare by the conductors, the Courts should not interfere with the order of dismissal by

modifying the same in exercise of the power conferred u/s 11A of the Industrial Disputes Act, only on the ground of sympathy. In this case

admittedly, the charges of misappropriation is proved and the appellant has questioned the order of dismissal after a period of six years and five months and the Labour Court has ordered reinstatement though without back wages only on the ground of sympathy. The reasons which we have attributed to dispose of Writ Appeal No: 1476 of 2001 are applicable equally to the facts of this case.

19. For all these reasons, we do not find any merit to interfere with the order of the learned single Judge in both the writ appeals. Accordingly, both the writ appeal fails and they are dismissed. Connected miscellaneous petitions are also dismissed.