

(2012) 10 MAD CK 0227
In the Madras High Court
Case No : Writ Petition No. 22767 of 2004

S. Venugopal

APPELLANT

Vs

Presiding Officer, Labour Court, Vellore and Another

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Citation : (2013) 1 LLJ 334

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : Balan Haridas for J. Muthu Kumaran, for the Appellant; P. Paramasivadosh, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The petitioner seeks for issuance of writ of certiorari mandamus to quash the award passed by the first respondent-Presiding Officer, Labour Court, Vellore, in I.D. No. 289 of 2000, dated 14.11.2003, by calling for the records connected thereto, with a consequential direction to the second respondent Corporation to reinstate the petitioner into service with continuity of service, backwages and all other attendant benefits. The petitioner was working as a Conductor in Tiruvannamalai Branch under the second respondent Corporation. On 13.3.1995, when he was on duty in the bus bearing Registration No. TN-23-0-296-203 (M) proceeding from Vandavasi, the Checking Inspector boarded bus at Kadaisikulam bus stop, whereby on verification by the Checking Inspector, it was found that the petitioner had issued tickets only upto 70 passengers out of 80 passengers. But, according to the petitioner, when he was about to issue tickets to the remaining passengers, the Checking Inspector snatched away the ticket book from him. Under these circumstances, the second respondent Corporation suspended the petitioner from service and thereupon, issued a charge memo dated 9.6.1995, containing 7 charges, which are extracted hereunder:

(i) On 13.3.1995, the delinquent employee collected Rs. 2.70/- from 9

passengers for travel between Vandavasi and Sesamangalam but issued pre-issued tickets of the denomination of Rs. 3/- each.

(ii) The delinquent employee collected Rs. 2.70/- from two passengers to travel from Vandavasi to Ramapuram but issued pre-issued tickets of denomination of Rs. 3/- each.

(iii) Caused delay in the issue of tickets of Rs. 1.60/- each to two passengers to travel from Vandavasi to Kadungalloor.

(iv) That the delinquent employee did not collect money or issue tickets to one passenger to travel from Vandavasi to Salavedu.

(v) That the delinquent employee had excess cash of Rs. 92.70/- in the collection bag.

(vi) That the delinquent misappropriated funds of the Corporation.

(vii) That the delinquent employee caused disrepute to the management.

On receipt of the charge memo containing above charges, the petitioner had submitted his explanations on 3.4.1995 rebutting the allegation and thereby requesting the management to drop the charges levelled against him. Subsequently, suspension order was revoked on 8.4.1995 and thereupon, he was also reinstated in service, however, an Enquiry Officer was appointed to enquire into the charges levelled against him. The said Enquiry Officer, after considering the entire records and reply submitted by the petitioner, came to the conclusion that the charges levelled against the petitioner were proved and thereby, he submitted a report before the second respondent Corporation. Thereafter, the second respondent Corporation issued a show cause notice dated 4.10.1995 seeking an explanation as to why the punishment of dismissal from service should not be imposed and for which, even though the petitioner had submitted his reply, the Joint Managing Director of the Corporation passed the final order dated 30.10.1995 imposing the punishment of dismissal from service. Aggrieved by the same, the petitioner preferred an appeal before the Managing Director of the Corporation, however, the said Managing Director, in his proceedings dated 7.5.1997, rejected his appeal. Questioning the dismissal order, he preferred an Industrial Dispute in I.D. No. 289 of 2000 before the first respondent/Labour Court, Vellore. The Labour Court, upon hearing the claim of both sides, dismissed the dispute and confirmed the order of dismissal. Being aggrieved by that, the petitioner has filed the present writ petition with the aforesaid prayer.

2. Mr. Balan Haridass, learned counsel appearing for the petitioner submitted that when no independent witnesses like passengers, who travelled in the bus were examined in the enquiry proceedings, the entire proceedings of the Enquiry Officer are vitiated, that too, when he not even examined the driver of the bus to arrive at a conclusion. Again when the above said mistake was pointed out before the Labour Court, the Labour Court also repeated the same grave error. He further submitted that the Checking Inspector boarded the bus even before

the bus reaching the stage and the alleged lapse would not have occurred, had the Checking Inspector boarded the bus after the bus reached the fare stage and again when all those facts were narrated in his explanations, the same were not even properly considered either by the Enquiry Officer or by the Labour Court, therefore, the impugned award is liable to be set aside.

3. In support of his submission, he has relied upon a judgment of this Court Chairman, Pandyan Grama Bank, Virudhunagar v. Presiding Officer, Labour Court, Chennai and Another 2010 (4) LLN 824 to say that the allegation made on the back of employees cannot be taken at face value and the concept of preponderance of probabilities does not mean that reliance can be placed on mere allegations, surmises or conjectures.

4. He also relied upon yet another judgment in Union of India (UOI) and Others Vs. Prakash Kumar Tandon, to say that the Enquiry Officer, being a quasi-judicial authority, should perform his functions fairly and reasonably by conducting a fair and proper enquiry to find out the charges levelled against the delinquent employee are true or not. But, in the present case, according to him, to prove the charges of pre-issued tickets to the passengers, the said passengers were not examined in the enquiry and further, the driver, who worked along with him on that day, was not even examined to explain either the petitioner's case or the management's case. Moreover, when the Checking Inspector, who was responsible for the initiation of departmental enquiry, was to be examined by the Enquiry Officer, but, admittedly, the said Checking Inspector failed to appear before the enquiry proceedings, therefore, in the absence of the evidence of the Checking Inspector, the charges cannot be held to be proved by the Enquiry Officer. This significant aspect was not considered by the Enquiry Officer nor by the Labour Court, therefore, he pleaded, the impugned award passed by the Labour Court, which is full of surmise and conjecture, certainly to be set aside.

5. Per contra, learned counsel appearing for the second respondent submitted that it is not necessary to examine the passengers who travelled in the bus as it has been settled by the Supreme Court that the passengers who had gone out and come in cannot be chased and brought before the Tribunal before a valid finding could be recorded. In support of his stand, he has also relied upon a judgment of the Apex Court in State of Haryana and Another Vs. Rattan Singh, to say that merely because the statements of the passengers were not recorded, the order of termination cannot be invalid. As such, he contended, the findings of the Enquiry Officer, on the basis of admission made by the petitioner admitting the charges 1 to 5, was rightly accepted by the Labour Court. The learned counsel further contended that since the charges levelled against the petitioner are serious one and the misconduct committed by the petitioner is one of misappropriation and after finding the admission of guilty made by the petitioner, imposing order of dismissal cannot be said to be disproportionate and therefore, this Court, he pleaded, should not interfere with the punishment awarded to the petitioner.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. It is no doubt true that, in a domestic enquiry, the petitioner had admitted his guilt before the Enquiry Officer in the enquiry proceedings and thereby he had also signed in the statement prepared by the Enquiry Officer. When he preferred an Industrial Dispute before the Labour Court, the Labour Court also came to conclusion that the petitioner has admitted the charges 1 to 5 levelled against him and finding no other gravity of the charges, that was committed by the petitioner, affirmed the order of dismissal. Therefore, the argument advanced by the learned counsel for the petitioner that the passengers and the driver of the bus were not examined do not carry any merit, as the Apex Court in *State of Haryana and Another v. Rattan Singh* (supra) has categorically held that merely because the statements of the passengers were not recorded, the order of termination cannot be invalid. Therefore, as stated above, when the petitioner, after receiving the show cause notice, has come forward before the Enquiry Officer and admitted all the charges and thereby he himself brought the controversy to an end, the petitioner should not have filed the writ petition raising unrelated legal aspects.

8. Further, given the facts and circumstances of the case, it is useful to refer to a judgment of the Hon''ble Apex Court in *State of Haryana and Another v. Rattan Singh* (supra), wherein the Hon''ble Apex Court in para 4 held as follows:

4. It is well settled that in a domestic inquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence, provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding even though of a domestic Tribunal, cannot be held good. However, the Courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the Tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way,

sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the revaluation of the evidence on the strength of co-conductor's testimony is a matter not for the Court but for the administrative Tribunal in conclusion, we do not think the Courts below were right in overturning the finding of the domestic Tribunal.

From the above, it is clear that once in the domestic enquiry based on evidences the Enquiry Officer comes to a particular conclusion, normally, it is not open to the Labour Court to substitute its subjective opinion in the place of the one arrived at by the Enquiry Officer. In the present case, there is an evidence of the Checking Inspector, who checked the bus, which establishes the misconduct of the petitioner. The Labour Court, by accepting the findings of the Enquiry Officer as well as the admission made by the petitioner admitting his guilt of all the charges levelled against him, rejected the claim of the petitioner.

9. Lastly, from the judgments cited by the learned counsel for the respondent, it could be seen that once an act of misappropriation is proved, whether it may be for a small or large amount, there is no question of showing any sympathy and reinstating the employee in service. When an employer loses his confidence particularly in respect of a person who is discharging an office of trust and confidence, there can be no justification for this Court in directing his reinstatement. Once the misconduct is proved, the Court has to sustain the order of punishment though it is harsh. Even if the misconduct is the first time, there is no ground to condone the misconduct in the scope of judicial review. Therefore, this Court fully accepts the correctness of the award passed by the Labour Court. In the light of the aforesaid conclusions arrived at by me, I find no merit in the writ petition and the same is dismissed accordingly. No Costs.