

(1993) 07 MAD CK 0039

In the Madras High Court

Case No : Writ Petition No's. 163630 of 1991 and 11639 of 1992

Thanthai Periyar Transport Corpn. Ltd.

APPELLANT

Vs

P. Sivagnanam and Another

RESPONDENT

Date of Decision : 05-07-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 11A

Citation : (1994) 1 LLJ 1093 : (1993) 2 MLJ 645

Hon'ble Judges : V. Bakthavatsalam, J

Bench : Single Bench

Judgement

Bakthavatsalam, J.—Both the writ petitions are directed against the award of the Labour Court in I. D. No. 381 of 1986 one by the

management-Corporation against the order of the Labour Court ordering reinstatement of the conductor-first respondent and the other by the first

respondent-conductor against the denial of back wages to him.

2. The Government by G. O. Ms. No. 2330, dated November 12, 1986 referred under Sec. 10 of the Industrial Disputes Act, the question

whether the non-employment of one Sivagnanam is justified, if not, to what relief he is entitled and to compute the relief, if any awarded in terms of

money if it can be so computed. In pursuance of that, the matter came up before the Labour Court. Though many charges were framed and

domestic enquiry was conducted by way of several charge sheets when the matter came up before the Labour Court, the conductor-first

respondent in W. P. No. 16360 of 1991 gave up the objections with regard to the domestic enquiry. As such the Labour Court went into the

question whether the charges framed against the first respondent are proved and whether the punishment inflicted upon the first respondent is

excessive.

3. The sum and substance of the charges levelled against the first respondent by way of various charge sheets, was correction of the number in the

ticket-books and short-remittances to the tune of Rs. 20.40, Rs. 27.15, Rs. 24.80 etc. After appreciating the evidence, the Labour Court held that

the Corporation has not proved beyond doubt that the first-respondent has misappropriated the amounts, but it had occurred because of the

negligence on the part of the first respondent-conductor. Holding so, the Labour Court went into question of punishment whether it is excessive

under Sec. 11-A of the Industrial Disputes Act and came to the conclusion that a punishment of dismissal is excessive and as such the first

respondent has to be reinstated without back wages.

4. Mr. T. Arulraj, learned counsel for the Corporation strenuously contends that the Labour Court has not appreciated the documentary evidence

produced before it with regard to the correction of numbers in the ticket books and in that sense the finding of the Labour Court is perverse, so as

to say that the first respondent is only ignorant and had not misappropriated any amount. According to the learned counsel for the Corporation it is

clear case of misappropriation of amounts due to the Corporation and as such the order of reinstatement is erroneous in law. Learned counsel

relied upon a judgment of the Division Bench of the Gujarat High Court reported in Gujarat State Road Transport Corporation v. Jamnadas

Beharilal, (1983) II LLN 583 and another judgment of a learned single Judge of the High Court of Punjab and Haryana, reported in Punjab

Financial Corp. Vs. Union Territory and Others, . The judgment cited by the learned counsel for the Corporation in Gujarat State Road Transport

Corporation v. Jamnadas Beharilal (supra) relates to the case of misappropriation by a conductor of a Road Transport Corporation. In that case,

the Division Bench of the High Court of Gujarat held, any misappropriation by a bus conductor must be viewed with a degree of seriousness and

as such set aside the order of the tribunal which held that the dismissal is bad, but at the same time remanded the case back to the tribunal to find

out whether the conductor can be absorbed in any other post.

5. The other cases relied upon by the learned counsel for the Corporation is a judgment of a Division Bench of this Court reported in South India

Sugars Ltd. v. First Additional Labour Court, (1989) II LLN 1044, which relates to the misconduct of an employee and the charge being assault

on security guard. Relying upon these judgments, as I have already stated, Mr. T. Arulraj, learned counsel for the Corporation, states that the

order of the Labour Court has to be held to be perverse and it has got to be remitted for considering the matter afresh in the light of the

documentary evidence produced before the Labour Court.

6. The other writ petition, W. P. No. 11639 of 1992, is filed by the conductor. Learned counsel for the petitioner therein contends that the

question with regard to the competence of the authority to punish and also the question with regard to the past record of service have not been

considered by the punishing authority. Learned counsel points out that though these points were raised before the Labour these points were raised

before the Labour Court, the Labour Court has brushed aside these two points and has not answered these questions one way or the other. As

such, learned counsel for the petitioner in this writ petition relying upon a judgment of a Division Bench of this Court in The Management of South

India Steel and Sugar Ltd. v. B. Ramalingam and 2 Ors., W. A. No. 675 of 1982, dated July 4, 1989, contends that when past record has not

been considered, the matter has to be remitted back to the punishing authority and there is no necessity to remit the matter to the Labour Court at

this stage.

7. Mr. T. Arulraj, learned counsel appearing for the Corporation, has no answer for the question, why these two issues raised by the petitioner in

W. P. No. 11639 of 1992 have been considered by the Labour Court. In fact, he is not able to answer these question, as the Labour Court

factually has not also considered them. A reading of the award of the Labour Court clearly shows that the Labour Court has given a go-by to these

two important issues raised by the conductor, the petitioner in W. P. No. 11639 of 1992.

8. It is well-settled that this Court is not sitting in appeal over the awards of the Labour Court in matters arising out of the provisions of the

Industrial Disputes Act. The only question with which this Court is concerned is whether the finding is perverse or without any evidence, or the

conclusion reached is such which a reasonable person will not reach on the

evidence adduced. Looked at from that angle, if the award of the Labour Court is examined, it is clear that it cannot be said that the order of the Labour Court is perverse on any ground. It is the Corporation, which has failed to adduce any proper evidence to prove the charges against the counter first respondent. So, on the evidence adduced, I do not think it can be said that the conclusion reached by the Labour Court is perverse. As rightly pointed out by the Labour Court, there is no evidence to show that the there respondent has misappropriated the amounts and it is only due to the negligence it had accused.

9. So, on merits I do not think this Court can interfere with the award of the Labour Court. However the other question remains unanswered, that

is, the grievances of the conductor, petitioner in W. P. No. 1639 of 1992 with regard to the back wages and it is a fact that the past record has not

been considered by the punishing authority. So, in my view, even if the punishing authority is going to consider the past record. I do not think the

petitioner is going to be benefited much because the Labour Court itself has granted the relief of reinstatement setting aside the order of dismissal.

But, with regard to the back wages, as no evidence has been adduced with regard to the past records, the Labour Court is not able to go into the

question. As such, it is necessary atleast for the purpose of finding out whether back wages have to be denied to the conductor, the question of

past record has to be gone into. For this limited purpose, the matter is remitted back to the Labour Court to find out whether the petitioner in W.

P. No. 11639 of 1992 is entitled to back wages and for that purpose the Labour Court will take into consideration the past record of the

petitioner and it is for the Corporation to produce the records before the Labour Court. The Labour Court will pass award afresh within a period

of three months from today. Accordingly W.P. No. 16360 of 1991, by the Corporation, is dismissed, W.P. No. 11639 of 1992 is allowed and

the matter is remitted to the Labour Court for the purpose as indicated above. No costs.