

(2000) 01 MAD CK 0071

In the Madras High Court

Case No : W.A. No's. 1035 and 1036 of 1989, 15 and 16 of 1990 and W.P. No's. 10717 of 1994

Thanthai Periyar Transport Corporation Ltd.

APPELLANT

Vs

Harikrishnan and Another

RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 LLJ 1023

Hon'ble Judges : P. Thangavel, J;N.K. Jain, J

Bench : Division Bench

Advocate : T. Arulraj, for the Appellant; S. Balasubramanian, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, J.—Writ appeals 1035 and 1036 of 1989 are filed against the orders of the learned single Judge dated November 8, 1989 made in W.P. Nos. 14661 and 14666 of 1989 and Writ Appeals 15 and 16 of 1990 are filed against the orders of the learned single Judge dated December 13, 1989 made in Writ Petition Nos. 15615 of 1989 and 15630 of 1989 respectively, wherein the learned single Judge had not interfered with the findings of the Labour Court concerned.

2. Writ Petition Nos. 10717/1994 and 15131 to 15133 of 1995, filed by the Transport Corporation challenging the awards passed by the Labour Court, had been ordered to include in the list along with the aforesaid appeals as the point in issue was one and the same. So, by this common judgment we are dealing with the aforesaid writ appeals as well as the writ petitions.

3. It is not necessary to give the entire facts pertaining to each of the writ appeals and writ petitions. Suffice it to give the brief facts which are necessary for the disposal of the writ appeals and writ petitions, which are as follows:

Respondents, who were working as conductors in the petitioner - Thanthai Periyar Transport Corporation (hereinafter referred to as the "Corporation"),

were charge sheeted separately on the basis of charges leveled against each of them. They denied the said charges. The management conducted domestic enquiries. The specific charge levelled on each of the conductors is that they have not acted with care and diligence while performing their duties and that because of their dereliction to duty and the act of misappropriation of amount, the Corporation incurred a heavy loss. An audit was conducted in pursuance of the receipt of a communication from Inspector General of Police, Pondicherry dated September 27, 1984 mentioning about the missing of some of the police warrants and the list had also been annexed thereto. It is stated that the conductors have not verified, with care, the police warrants used by Police Constables. It has also been stated that the signatures and seals affixed in the alleged warrants were not so clear and on account of that, they have committed dereliction of duty.

4. The charges levelled against the conductors of the said Corporation are, that they had issued tickets without verifying the correctness of the warrant, that they have not issued tickets in the continuous numerical order though single warrant contained 12 persons. It is also the charge of the Corporation that same police travelled in two buses at the interval of 3 1/2 hours i.e. they had travelled from Pondy to Madras on August 19, 1984 at 4-30 p.m. and also at 8-00 p.m. that same set of constables travelled from opposite direction at the same time in different buses, i.e. on August 20, 1984 at 4-40 p.m. from Madras to Pondy and from Pondy to Madras. It is also another specific charge that counter foil and motor company part of same number of warrants are used by different conductors and that they have not verified the attestation and also the date. It is the stand of the Corporation that because of carelessness and dereliction to duty of the conductors involved, in those incidents misappropriation of amount had been done and the Corporation incurred a heavy loss.

5. Domestic enquiry had been conducted against each of the conductors on the charges levelled against each of them. Before enquiry, it was stated that it was their duty to receive the warrant and issue tickets in exchange of the bus warrants, there was no scope of receiving money and they have not misappropriated any amount of the Corporation.

6. On the basis of the evidence adduced by management and also on the side of employees-conductors, and also on the basis of available materials, the enquiry officer found that the charges levelled against each of them stood proved. After the procedure of law, all the respondents-conductors were removed from service, against which each of them raised (sic) separate industrial dispute.

7. Before the Labour Court it was submitted that on an earlier occasion due to some strike, they were removed from service, and thereafter the matter was settled u/s 12(3) settlement, and they were reinstated in service with continuity of service. In reply to the show cause notice, petitioners submitted that previous punishment has not been proved. It is also submitted that some of the petitioners were kept under suspension and were dismissed without proper

enquiry. Ultimately, the Assistant Commissioner for Labour held that the domestic enquiry was not fair and 12 conductors were reinstated in service. A writ petition was filed by the management and the same was dismissed by this Court in the admission stage itself. When the writ appeals came up for hearing the management agreed to reinstate the workers and accordingly reinstated. When the department was asked to give the back wages, Corporation have disputed before the Labour Court, conciliation by the Labour Officer has also got failed. They prayed for setting aside the order of dismissal passed against each of them. Detailed counter affidavits were filed narrating the facts. It is stated that the conductors have misused the tickets and without verifying the warrants allowed the Police constables to take journey. It is submitted that it was not possible to travel in short time again before reaching the bus. It is also stated that conductors have used the warrant which belongs to the motor company of a different route and therefore conductors have misappropriated money of the Corporation and also misused the office copy of the Police warrant.

8. Before the Labour Court, the witnesses both on the side of the Management and the Employees/Conductors were examined. Documents also have been marked on both sides. After hearing the arguments advanced on both the sides and upon perusing the materials on record, the Labour Court had come to the conclusions separately that the mistakes committed by the Conductors were due to negligence only and they could not amount to misappropriation of amount and as such the punishment of removal from service so awarded on each of them, is bad.

9. The findings of the Award were questioned before this Court. They were dismissed by the learned single Judge. Hence the writ appeals are before us. As already stated, the writ petitions filed by the Corporation challenging the award of the Labour Court passed in favour of conductors are also before us, for disposal.

10. Reiterating the contentions raised before the Labour Court, learned counsel for the appellant Corporation submitted that just a glimpse of the charges levelled against the conductors would show as to how serious mistakes had been committed. He further submitted that in the audits, the management so conducted, it is seen that as per the entries available on record, that 12 Police Constables returned to the original destination Pondy, after visiting Madras, on the same day. In most of the warrants, the numbers of the tickets so issued, were not shown. It is also stated for correcting the starting point, no attestation has been made. So also for making alteration in the destination points also, no attestation was made. In another case, it has been found that the same set of Police travelled in another bus to Madras within a space of ten minutes which is highly ridiculous. In another instance, in two bus warrants, it is noticed that in both, the same set of Police Constables travelled. In another case it is seen that the same set of Police had gone to Tiruchy and returned to Pondy in the same bus. Learned counsel submitted that because of the carelessness and dereliction

to duty of the conductors concerned, and because of their negligence, the misuse of police warrants was done and by this act of misappropriation, the Corporation incurred a heavy loss. It is also submitted that one of the conductors applied and obtained anticipatory bail which would clearly show his knowledge about the misappropriation. It is further submitted that though the Labour Court had come to the conclusion that the conductors had committed such mistakes, the Labour Court had erred in taking into account that police constables concerned were not examined. It is submitted that the Corporation obtained summons to examine those police constables, but it was dropped. The past records of the conductors were also not taken into account by the Labour Courts. He further submitted in such circumstances the interference of this Court is warranted, which the learned single Judge failed to take note of. Because of the misappropriation so stated, the Corporation incurred a heavy loss. With these contentions, the Corporation is before us.

11. Learned counsel appearing for the conductors stoutly denied the arguments advanced by the learned counsel for the Corporation stating that no question of misappropriation of amounts is involved in the facts of the given case. It is contended that the conductors are only to honour the presentation of the bus warrants produced by Police personnel. It is also to be seen that if they are giving importance to small discrepancies, at times it may even result in defeating the very purpose. At the relevant point of time, there was no Rule as to how to verify and what will be the consequence of giving credit without verification. The relevant Rule came into effect only on September 18, 1985. It is further stated that the report of the Audit pertains to the period much earlier to the communication of the Inspector General of Police regarding the missing of bus warrants. The Corporation cannot take advantage of the fact that one of the conductors applied and obtained anticipatory bail, apprehending arrest, stating that he had full knowledge about the missing warrants. It is further submitted that the loss incurred by the Corporation had been deposited by each of the conductors. In such facts and circumstances the findings arrived at by the Labour Courts that the mistakes committed by the Conductors due to carelessness, would not warrant dismissal from services, need not be interfered.

12. We have heard the learned counsel on both sides and perused the materials on record. No doubt this Court, in appropriate case, can quash the Award passed by Labour Court. But at the same time," the jurisdiction of this Court, while exercising the discretionary power under Article 226 of the Constitution of India is very limited. This Court can quash the Award, inter alia provided when the Labour Court has committed an error apparent on the face of records or when the findings so arrived are perverse otherwise not. This Court cannot reconsider or re-appreciate the evidence, on the basis of available records on record. It is also settled that perversity can only be seen if any reasonable person or authority properly instructed in me law, could have arrived at such a finding. It is also well settled that this Court while exercising the discretionary jurisdiction under Article 226 of the Constitution of India, cannot take a different conclusion

even if on same set of facts a contrary finding is possible to be arrived as this Court is not a Court of appeal.

13. That apart, strict law of evidence and strict Rules of procedure are not necessarily to be followed in domestic enquiry and the probabilities alone have to be seen. It is also settled that hearsay evidence cannot be given much credence. Strict law of evidence will not be applicable in domestic enquiry as the proceeding is neither of civil nature nor criminal.

14. No doubt true, something had happened seriously. By letter dated September 27, 1984, the Inspector General of Police, Pondicherry, stating some Police warrants, whose numbers were annexed thereto were alleged to have been found missing, requested the Accounts Officer, Thanthai Periyar Transport Corporation, Villupuram, not to entertain those bus warrants. The said fact was brought to the knowledge of all crew members by affixing notices on the notice boards. Audit reports which had been done subsequently but pertaining to the period earlier to the communication of the Inspector General of Police, mentioned above, revealed that there were some discrepancies while entertaining the police warrants by the conductors, on the basis of which, they had been charge sheeted. As already stated, the Labour Court has held that the mistakes so committed by the conductors would not attract the punishment of removal from services. Learned single Judge also, did not incline to interfere with the findings of the Labour Court.

15. On a cursory perusal of the records available before us it is seen that the Conductors had been charge sheeted in relation to the incidents which occurred prior to the date of communication of Inspector General of Police, Pondicherry, mentioned above. The concerned Police Officials were not examined. Learned counsel for the Corporation submitted that they obtained summons but then the action was dropped. Whatever be the reason, what the stark reality remains is that they have not been examined to ascertain as to whether actually they had performed journey or not. It is also to be admitted that the non-examination of the Police Officials concerned, cannot be taken advantage by the Conductors. We take note of the contention of the learned counsel for the conductors, that in the absence of any specific Rule or procedure to be followed at the relevant point of time, bus conductors are expected only to honour the presentation of the bus warrants produced by Police Officials, which were duly signed by higher officers and if they are not honouring them, giving much importance to small discrepancies, at times, it may even result in defeating the very purpose. But to our mind, certainly that does not mean that the conductors should accept all types of bus warrants presented by Police Officials. Due care and vigilance is expected from the conductors. But the fact remains that at that point of time, no Rule was available. The conductors before us, had remitted the amount, which was alleged as loss to the Corporation due to their negligence, as per the Rule, which came into effect only on September 18, 1985. It has also come on record that no action was taken on criminal investigation pertaining to such incidents by

the Corporation. In our view obtaining an anticipatory bail, apprehending arrest, will not give the impression that the person had full knowledge about the mistake committed. Be that as it may, this Court is to see as to whether the domestic enquiries so conducted, were proper or not. A cursory perusal of the records placed before us shows that in the domestic enquiry, entire materials were placed before the Management and the same had been considered. The Labour Courts had considered all the aspects of the matter, elaborately and came to the conclusion that the punishment of "removal of service is bad for the reasons mentioned therein. Under the circumstances we cannot re-appreciate the evidence and reverse the findings so arrived even if there is a possibility to take a different view. Learned counsel also is not able to show any procedural illegality in the findings so arrived.

16. As mentioned above no perversity of approach and apparent error on the face of the records, had been shown before us, calling for our interference, while exercising the discretionary jurisdiction under Article 226 of the Constitution of India. In our view, the Labour Courts, on considering the materials available on record, taking into consideration the fact that no Police Official was examined, to ascertain whether they had travelled actually or not, and the fact that the mistakes committed by the Conductors, which were due to carelessness, would not amount to be serious in nature, calling for their removal from service and also taking into account the fact that in view of the Rule which came into effect subsequently, they had made the loss good by remitting the said amounts, which were alleged to be loss to the Corporation, rightly came to the conclusion that the conductors have to be reinstated into service. Learned single Judge also observed that the Labour Court had come to the conclusion rightly on the appreciation of evidence, and this Court, while exercising the discretionary power under Article 226 of the Constitution of India should not be taken as an appellate Court.

17. Under such circumstances and in view of what had been stated above, we are of the considered view that no interference is called for. The writ appeals are therefore liable to be dismissed.

18. It is brought to our notice that the appellants conductors were reinstated into service as per the decision of the learned single Judge made in writ petitions, mentioned above, but they are doing some other job. We make it clear that the respondents conductors shall continue to perform the duties of conductors only. The writ appeals are dismissed with above direction.

19. So far as the writ petitioners-conductors are concerned, it is seen that the case of the reinstatement of the appellants-conductors had been relied in the awards itself. In view of what had been discussed above, we are dismissing the writ petitions also. We make it clear that the respondents-Conductors in these writ petitions shall perform the duties of conductors only.

20. There will be no order as to costs. Connected C.M.P's are also dismissed.