

(2007) 01 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 1970 of 2001

V.L. Kalaiselvam

APPELLANT

Vs

The Managing Director, Tamil Nadu State Transport
Corporation [formerly known as Pattukottai Alagiri Transport
Corporation]

RESPONDENT

Date of Decision : 02-01-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 32(2), 33A

Citation : (2007) 01 MAD CK 0044

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : C. Manohar, for the Appellant; N.V.V. Krishna, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—Challenge in this Writ Petition is the Order of the II Additional Labour Court, Chennai in I.D. No. 415/1995 dated 25.07.2000 and for a direction to the Respondent to reinstate the Petitioner with back wages and consequential benefits.

2. Brief facts which led to this Writ Petition are as follows:

2.1.The Petitioner joined the Respondent Corporation on 26.12.1989 as a Junior Tradesman and his token number was T.T.3702. While the Petitioner was working as Junior Tradesman in the Broadway Depot of the Respondent Corporation in the year 1992 and he was in charge of maintaining the account of diesel in the said Branch. On 09.05.1992, the Petitioner is said to have manipulated the entries in the ledger as having unloaded 11,972 liters of diesel as against actual unloading of 11,032 liters of diesel and thereby misappropriated 940 litres of diesel. On 12.12.1992 and on 26.12.1992, the Petitioner is said to have misappropriated 3,676 litres and 3,922 litres of diesel in all, 8,538 litres of diesel and thus misappropriated total cost of Rs. 58,399.82.

2.2. Explanation was called for from the Petitioner and since the explanation was not satisfactory, Domestic Enquiry was held against the Petitioner. The Enquiry Officer found him guilty of all the charges. After issuing the second Show Cause Notice, the Petitioner was removed from service by an Order dated 24.03.1994. Challenging the Order of removal from service, the Petitioner has raised I.D. No. 415/1995. The II Additional Labour Court dismissed that Petition, which is impugned in this Writ Petition.

3. The learned Counsel for the Petitioner has raised the first point, contending that I.D. No. 62/1982 was pending and whenever any employer discharges an employee, the employer must obtain approval u/s 33(2)(b) of I.D.Act, and failure to do so would render the Order of dismissal inoperative.

4. The contention of the Petitioner that dismissal Order is vitiated because of non-approval of Labour Court is not acceptable for the reason that I.D. No. 62/1982 was pending before the Industrial Tribunal regarding bonus dispute for the period from 01.04.1981 to 31.03.1982. The said dispute I.D. No. 62/1982 relates only to the employees who joined in Pattukottai Alagiri Transport Corporation, who have come from erstwhile Pallavan Transport Corporation Limited [District]. I.D. No. 62/1982 was disposed of with a direction that bonus for the period 1981 to 1982 may be settled in addition to adhoc amount between Rs. 50/- to Rs. 100/- for those who are entitled for bonus for the period 1981-1982. The Petitioner has joined service in Pattukottai Alagiri Transport Corporation only in 1989 and he was not a vested workman in I.A. No. 62/1982. Since the Petitioner was not a vested workman to the said dispute I.D. No. 62/1982, there was no question of approval of Industrial Tribunal u/s 32(2)(b) of I.D.Act. It is relevant to note that the Petitioner has not filed any complaint invoking Section 33(A) of I.D.Act alleging non approval of the Labour Court.

5. The Petitioner was charged for misappropriation of diesel, totalling cost of Rs. 58,399.82, by manipulating the ledger. It was not disputed that the Petitioner was in-charge of maintaining the account of diesel in Broadway Depot. On behalf of the Petitioner, it was contended that the responsibility to check up diesel was only with the Branch Manager. In support of his contention, the learned Counsel for the Petitioner has drawn the attention of the Circular dated 24.04.1987 where it has been pointed out that the Branch Managers are to check the diesel truck on arrival and also after unloading and only thereafter, the truck should be permitted to leave the depot and in the absence of Branch Manager, any one of the Supervisors of next rank should check. Laying emphasis upon the Circular, it was contended that the responsibility of checking diesel at the time of unloading lies only with the Branch Managers and the Petitioner cannot be made responsible for the alleged misappropriation. The learned Counsel for the Petitioner further contended that the Circular produced before the Labour Court was not properly considered.

6. In the Domestic Enquiry, the Petitioner has not denied the corrections made in the ledger. Case of the Petitioner was that those corrections were made only at

the instance of the Branch Manager. During the Domestic Enquiry, the Branch Manager - Dasaradan was examined and he has clearly stated about the entrustment of maintaining diesel accounts to the Petitioner. The manager has denied the suggestion put to him that the Petitioner was compelled to make corrections.

7. Both the Enquiry Officer and the Labour Court have adverted to the evidence of the Branch Manager to negative the Petitioner's contention that corrections were made only at the instance of Branch Manager.

8. In the Circular dated 24.04.1987, it is stated that only Branch Managers are responsible to check the diesel on arrival of truck and at the time of unloading. The charge against the Petitioner is clear case of manipulation - altering the entries in the ledgers in his own handwriting. When it is a clear case of manipulation of entries in diesel Registers, the said Circular is of no avail to the Petitioner.

9. In fact, the Petitioner has taken the stand that he has corrected registers at the instance of Branch Manager to show Kilometer efficiency. This contention was well considered by the Labour Court by referring to the evidence of the Enquiry Officer. Kilo Meter efficiency could be shown only if lesser quantity of diesel is written in ledger, as against the huge quantity of diesel unloaded. But the Petitioner has manipulated the records i.e. as against the lesser quantity of diesel unloaded [11,032 liters], entries were made in the ledger as 11,972 liters and the Corporation was made to pay for excess of 940 liters of diesel. The Petitioner has totally misappropriated an amount of Rs. 58,399.82. The contention that entries were made at the instance of Branch Manager, for the purpose of showing Kilo Meter Efficiency, was rightly negated both by the Enquiry Officer and the Labour Court.

10. Taking me through the Order of the Labour Court, the learned Counsel for the Petitioner would contend that Labour Court has not properly appreciated the Circular and other contentions raised by the Petitioner. It is well settled that in Writ Jurisdiction, under Art. 226 of the Constitution of India, it is not the function of the High Court to review the evidence and arrive at an independent finding on the evidence. All that we have to look into is whether the proceedings against the delinquent was held in a manner consistent with the rules of natural justice or in violation of statutory Rules or whether the authorities have been influenced by irrelevant consideration or the conclusions, on the face of it, is arbitrary and any error of law apparent on the face of record is made out. In consideration of evidence and materials, the Enquiry Officer has found the Petitioner guilty of charges. By perusal of the Labour Court Order, it is seen that all the points raised by the Petitioner has been discussed by the Labour Court. Hence, there is no error of law apparent on the face of the record, calling for interference.

11. We are then left with the question regarding the quantum of punishment only. The Petitioner is said to have been charged for misappropriation of Rs.

58,399.82. It was repeatedly held by the Supreme Court that once the act of misappropriation was proved, there is no question of showing sympathy to the workman or of considering his past unblemished record.

12. In *Kerala Solvent Extractions Ltd., v. A.Unnikrishnan and Anr.* 1995 (2) LLN 968 the Supreme Court deprecated the misplaced sympathy, generosity and benevolence, when discretionary powers are used in favour of a person, who does not deserve the same. In the case involved in the above decision, a workman obtained employment by suppressing the truth, regarding his educational qualification. When it came to light, his service had been terminated, which was challenged before the Labour Court, which held the conduct of the workman did not amount to false representation, which was upheld by the Court, for different reasons.

13. The learned Single Judge has ordered reinstatement as a special case and not by way of precedent. When that Order was challenged before the Supreme Court, the Supreme Court has held in the above cited case as follows:

... In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability".

14. In a case of misappropriation of funds of Company, the Labour Court, holding that charge had been proved, directed reinstatement without back wages, invoking Section 11A of I.D.Act. The learned Single Judge of the High Court had confirmed the award of the Labour Court which was challenged before the Division Bench. Referring to *Janatha Bazaar/South Kanara Central Cooperative Wholesale Stores Ltd., v. Secretary, Sahakari Naukarara Sangha and Ors.* 2000 (4) LLN 571 and other cases, in 2004 (3) LLN 1019 Division Bench has held that once the act of misappropriation was proved, there was no question of showing uncalled for sympathy to the workmen or of considering their past unblemished record.

15. In *Management of Catholic Syrian Bank v. Industrial Tribunal, Madras and Anr.* 1999 (1) LLN 280 this Court had an occasion to consider, whether a person who committed fraudulent and dishonest act, could be considered for reinstatement in the service, as well as whether the past conduct of the employee has to be taken into consideration, if so what is the effect. In the said

case, this Court has held as follows :

... The past conduct of the employee, viz., that he has not suffered any penalty earlier is not by itself sufficient to hold that the Order of dismissal should not have been passed. Reference to the past record of service in the bipartite settlement is not meant to trap to render ineffective, Order of termination passed as a consequence of grave misconduct having been proved.

16. It was further held as follows:

... It is the function of the Court to ensure that moralistic standards like honesty and integrity, the condemnation of fraud, theft and the like are maintained to the extent they are required under the law expressly or impliedly. It can hardly be said that every employee has a right to commit fraud or theft or to be dishonest in his dealings either with the employer or with the customers of the employer. No employee can claim a right to commit fraud during the course of his employment with the employer and in relation to the affairs of the employer or its customers....

... Though in cases, where it is warranted justice may be required to be rendered with mercy, that itself however, is not to be carried to the extent of abandoning, of ethical standards reflected in the law on the ground that it is not the function of the Court to be concerned with such moral or ethical standard.

17. In yet another case, the delinquent was found guilty of theft of cycle chain. The Labour Court has awarded reinstatement with 50% backwages and the same was upheld by Single Judge. When that was challenged, holding that there is no question of showing of uncalled for sympathy to the work man who is charged for misappropriation, in 2005 (2) L.L.N. 512 [Management of T.I. Diamond Chain Ltd. v. P.L. Ramanathan and Anr.], the Division Bench of this Court has held:

3. It has been repeatedly held by the Supreme Court that once the Act of misappropriation was proved, may be for a small or large amount, there is no question of showing uncalled sympathy to the workman or of considering his past unblemished record and the only punishment which should be given in such cases is dismissal. The Supreme Court also held that in cases of proved misappropriation, there is no question of considering the past record and the Labour Court cannot substitute the penalty of dismissal imposed by the employer in such cases even if the misappropriation is of a small amount, vide *Janatha Bazaar/South Kanara Central Cooperative Wholesale Stores Ltd., v. Secretary, Sahakari Naukarara Sangha and Ors.* 2000 (4) LLN 571 *Municipal Committee, Bahadurgarh v. Krishnan Behari and Ors.* 1996 (2) LLN 881 *Uttar Pradesh State Road Transport Corporation v. Basudeo Chaudharay and Anr.* 1997 (2) SCC 370; *Punjab Dairy Development Corporation Ltd. and Anr. v. Kala Singh* 1997 (2) LLN 1017. We are, therefore, of the view that the Labour Court was not correct in ordering the reinstatement of the workman with fifty per cent back wages.

18. In view of the settled position of law and in view of the fact that the

misappropriation committed by the Petitioner is proved, this Court finds no reason warranting interference in the dismissal Order of the Petitioner, confirmed by the Labour Court.

19. In the result, the Writ Petition fails and the same is dismissed. No costs.