



W.P.(MD).No.9120 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.08.2023

PRONOUNCED ON : 27.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.9120 of 2022

and

W.M.P(MD)Nos.6531 of 2022, 12687 of 2022
& 4285 of 2023

The Managing Director,
Tamil Nadu State Transport Corporation
(kumbakonam Division II) Limited,
Periyamilaguparai,
Tiruchirappalli.

... Petitioner

Vs.

P.Loganathan

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the award passed by the Labour Court, Tiruchirappalli in I.D.No.65 of 2004, dated 13.08.2019 and quash the same.

For Petitioner : Mr.S.C.Herold Singh
for Mr.D.Sivaraman

For Respondent : Mr.V.Karthikeyan



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ORDER

The present Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorari, to quash the award passed by the Labour Court, Tiruchirappalli in I.D.No.65 of 2004, dated 13.08.2019.

2.Heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner and Mr.V.Karthikeyan, learned counsel appearing for the respondent and perused the materials available on record.

3.The respondent was working as a Driver in the petitioner's Transport Corporation and on 27.11.2000 at about 03.00 a.m when he was on duty as a driver in the bus bearing Registration No.TN-45-N-1348 from Trichy to Chennai, near Melmaruvathur, he drove the bus in a rash and negligent manner and dashed behind a parked lorry due to which one passenger and conductor of the bus died and some other passengers got injured and damages were caused both to the bus as well as the lorry. In such circumstances, the respondent was placed under suspension from 28.11.2000 to 06.12.2000 and a charge memo was issued on 06.12.2000 levelling



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four charges against him. The respondent submitted his explanation on 10.02.2001 and not being satisfied with the same, an oral enquiry was directed to be conducted by appointing an Enquiry Officer. The respondent participated in the enquiry. The Enquiry Officer vide his report dated 12.04.2001 found that all the charges levelled against the respondent were proved. On 11.05.2001, a second show cause notice was issued, for which the respondent submitted his reply on 06.08.2001. Thereafter, not being satisfied with his reply, final orders were passed on 14.08.2001. After due consideration of the entire records including the past conduct of the respondent, the punishment of dismissal from service was imposed.

4.The respondent raised an Industrial Dispute in I.D.No.65 of 2004 against the dismissal order dated 14.08.2001 before the Labour Court, Trichy. The Labour Court, by award dated 03.01.2013, set aside the order of dismissal and directed the Management to reinstate the respondent with continuity of service and 25% back wages. Assailing the same, the petitioner approached this Court by filing a Writ Petition in W.P(MD)No.11054 of 2015. This Court was pleased to set aside the award passed by the Labour Court, Tiruchirappalli in I.D.No.65 of 2004 and remitted the matter back to



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the file of the Labour Court, Tiruchirappalli, directing to hear both the parties and pass fresh award within a period of three months. After hearing both the parties, the Labour Court passed the impugned order holding that the misconduct alleged against the respondent was not proved and further directed the Management to pay 50% back wages from the date of dismissal till the date of his superannuation with all attendant benefits, monetary benefits and pensionary benefits. Assailing the same, this Writ Petition came to be filed.

5.The learned counsel appearing for the respondent has filed a counter-affidavit and submitted that the alleged accident took place on 28.11.2020. Hence, the petitioner Corporation issued the charge memo for four counts of charges, which are extracted as follows:-

"i) Negligently drove the bus TN-45-N-1348 on 27.11.2000 at about 03.00 AM and dashed behind the parked ABT Parcel Service lorry TN-38-0911.

ii) Due to the accident, he caused the death of one passenger and conductor of the bus, besides 3 passengers sustained grievous injuries.

iii) Caused damages worth about Rs.27,450/- to the bus.



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iv) Caused damages worth about Rs 9,000/- to the lorry.”

6.The learned counsel appearing for the respondent submitted that at the time of the accident, there was no one in the said place since the accident took place at 03.00 a.m. The enquiry officer, without considering any material evidence, mechanically held that the charges were proved against the respondent. The enquiry findings, dated 16.04.2001, which is in page No.39 and the operative portion in page No.41 are derived as follows:-

“நி.சா.1 கிளை மேலாளர் அவர் சம்பவ இடம் சென்று விபத்து பற்றி ஆய்வு செய்தறிக்கை, வரைபடம், விரிவான விபத்தறிக்கை தாக்கல் செய்திருக்கிறார். நி.சா.ஆ.1 முதல் 3 இதற்கான ஆவணங்கள் விபத்து சம்பந்தமாக காவல்நிலையத்தில் புகார் கொடுக்கப்பட்டு கு.சா.மீது இ.த.ச.279 மற்றும் 337 பிரிவுகளில் கீழ் வழக்கு பதிவு செய்யப்பட்டிருக்கிறது. நி.சா.ஆ.5 முதல் தகவல் அறிக்கை நகல் லாரி மற்றும் பேருந்திற்கு ஏற்பட்ட சேதம் குறித்த சேத மதிப்பு அறிக்கை நகல் வாரி மற்றும் பேருந்திற்கு ஏற்பட்ட சேதம் குறித்த சேத மதிப்பு அறிக்கை தான் நி.சா.ஆ.4 நி.சா.ஆ.6 முதலிலை உதவியாளர் அறிக்கை நி.சா.ஆ.7 பேருந்தில் பயணம் செய்த பயணியின் அறிக்கை நி.சா.ஆ.8 சி.எப்.எக்ஸ் அறிக்கை நி.சா.ஆ.9 தொடர் லாக்சீட்டுகள் நி.சா.ஆ.



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10 தொடர் சம்பவ பற்றிய புகைப்பட நகல்கள் விபத்து பேருந்தில் பயணம் செய்த நபர் கு.சா.தரப்பில் கு.சா.2 ஆக விசாரிக்கப்பட்டார். விபத்து சமயம் தான் அந்த பேருந்தில் பயணம் செய்ததாக அவர் கூறினாலும், பயணம் செய்ததற்குரிய பயணச்சீட்டு தாக்கல் செய்யப்படவில்லை. அவர் கு.வா.விற்கு வேண்டியவர் என்பதால் அவருக்கு ஆதரவாக சாட்சியம் சொல்கிறார் என்ற நிர்வாகத் தரப்பில் கூறப்படும் வாதுரை ஏற்கத்தக்கதே விபத்து நடந்த சாலை தேசிய டெடஞ்சாலையின் 2 புறமும் அதிக போக்குவரத்தக்கள் பகுதி. ஏனவே கு.சா.பேருந்தை மிதமாக வேகத்தில் சென்றிருந்தால் இவ்விபத்து ஏற்பட்டிருக்காது. விபத்திற்கும் பயணிகளுக்கும் ஏற்பட்ட காயங்களுக்கும் நடத்துனர் மற்றும் ஒரு பயணி இறந்து போனதற்கும், பேருந்து மற்றும் பார்சல் லாரிக்கு ஏற்பட்ட சேதங்களுக்கும், கு.சா.வின் வேகமும், கவனக்குறைவும், அாக்கிரதையும் தான் காரணம்...”

7.A careful reading of the said portion of the enquiry report would reveal that no one was present in the said place of the accident. The entire enquiry report proceeded only on the assumption of the petitioner Corporation. The Branch Manager of the petitioner Corporation visited the place of the accident after a long time from the date of the accident. In fact, there was no eyewitness at all to prove that the accident was caused by the respondent. That apart, the petitioner Corporation had filed a counter in M.C.O.P.No.653 of 2002 and the same has been marked before the Labour Court as Ex.W.10



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and paragraph No.20 of the counter-affidavit has been extracted in the impugned award as follows:-

"20.Ex.W.10 is a copy of counter filed by the respondent/management in MCOP.No.653 of 2002. In the counter, the respondent/management stated that:-

“At the place of occurrence ABT parcel service lorry bearing No.TN 38 0911 was parked abruptly on the western portion of the Thar road due to mechanical defect with out any signal or switching on the rear parking red lights. All the wheels of the parcel lorry were parked in the thar road. There is no reflector or any warning lamp in the parked lorry.....At the place of occurrence when the driver of this respondent was proceeding towards North and a lot of vehicles were coming in the opposite direction with bright headlights. In the glare of the bright headlights the driver of this respondent was not able to see the parked ABT parcel lorry TN 38-0911..... When this respondent's bus was just 30 feet away from the parked lorry, the driver noticed the parked parcel lorry and applied brakes heavily and suddenly. Inspite of the same, the front portion of the respondent bus dashed against the rear portion of parked lorry. The driver of this respondent's bus was not able to turn the vehicle to his right side due to heavy traffic in the



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opposite side at that point of time. The driver of the parked parcel lorry was mainly responsible for the accident. The driver of the parcel lorry ought not to have parked the same abruptly in the tar road without any warnings. Thus, the respondent driver was in no way responsible for the accident..... The accident happened due to the negligence of parked parcel lorry driver."

8.The learned counsel appearing for the respondent categorically stated that the accident was not caused by the rash and negligent driving of the respondent and the matter has been elaborately considered by the Labour Court twice and favourable order has been passed by the Labour Court in both the instances and hence, the impugned order need not be interfered with and pressed for dismissal of the Writ Petition.

9.The charge against the respondent is that he drove the bus bearing Registration No.TN-45-1348 at about 03.00 a.m on 27.11.2000 in the morning in a high speed, in a rash and negligent manner and dashed against a stationed ABT Parcel Service lorry from behind causing the death of the bus conductor and a woman passenger and injuries to 3 passengers and damage to the bus and the

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the full blame on the other driver to escape from the consequences of facing a criminal case. On that basis, the Labour Court, without giving importance to the F.I.R which was registered on the basis of the complaint lodged by the driver of the ABT parcel service, proceeded with the trial. Though the appropriate person to speak about the accident is the driver of the parcel lorry, he was not examined as a witness in this case. Though it is not compulsory to examine the driver of the parcel service as a witness on the side of the petitioner Corporation, he is said to have given a statement to the Branch Manager of the petitioner Corporation and the said Branch Manager was examined as M.W.1 by the Labour Court. However, the said Branch Manager did not produce any statement as given by the lorry driver before the Labour Court.

12.A report which is marked as Ex.M.5 was filed by the Branch Manager at the time of his examination, wherein it has been recorded that the lorry driver informed as if he parked the lorry on the left side of the road and had gone for tea, to a tea shop situated near the petrol bunk. The submission of the bus driver is that only the lorry driver suddenly drove the lorry in the reverse direction to reach the highways. Had the lorry driver been inside the lorry at the time of the

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accident, the defence taken by the bus driver would be probable. But according to the report of the Branch Manager, who deposed in his evidence as M.W.1, the lorry driver was not in the lorry at the time of the accident, which would run contrary to the explanation of the bus driver. So, the Labour Court proceeded to examine whether at the time of the accident, the lorry driver was inside the lorry or had he gone away for tea, to a tea shop near the petrol bunk. The bus driver was examined himself as W.W.1. In his cross-examination, he has stated as follows:-

“..... 20 அடி 30 அடி தள்ளி பெட்ரோல் பங்க் இருக்கிறது. விபத்து நடந்த இடத்தில் அருகில் டீ கடை ஒட்டல் எதுவும் இல்லை.....”

13.The bus driver had categorically deposed in his cross-examination that there was no tea shop or hotel near the place of occurrence. The Labour Court observed that the said version of the bus driver was brought out only by way of cross-examination by the Management, and that it was not suggested to the bus driver that there was a tea shop near the place of occurrence or near the petrol bunk. Thus, the Labour Court observed that the evidence given by the



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weightage by the Labour Court by observing that the bus driver in his evidence stated that the lorry suddenly came in the reverse direction to approach the National Highways and the cross-examination of the bus driver ie., W.W.1 is extracted as follows:-

“விபத்து (நடந்த இடத்தில்) அருகில் 20 அடி அல்லது 30 அடி தள்ளி பெட்ரோல் பங்க் இருக்கிறது.”

“விபத்துக்குள்ளான லாரி பின்னோக்கி வந்தது என்றால் பெட்ரோல் போட்டு வீட்டோ அல்லது வேறு காரணத்திற்காகவோ பின்னோக்கி வந்திருக்கலாம்.”

15.Thus, the Labour Court concluded that near the place of occurrence, there was no tea stall. So the lorry driver would not have left the lorry unattended, in the middle of the road and had gone for taking tea. But near the place of occurrence, there is a petrol bunk. The only witness, examined before the Court, who could directly explain the accident was the bus driver W.W.1 alone and the Labour Court proceeded to observe that the evidence of W.W.1 is more probable and believable as to the nature of the accident. From the evidence of W.W.1 and from Ex.M.1-sketch, the Labour Court held that it appears that only the lorry would have come suddenly on the reverse side either from the petrol bunk after filling petrol or for any



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other reason to reach the National Highways. Though the petitioner Corporation relying upon the concept of *res ipsa loquitur*, that the accident happened only because of the high speed, rash and negligent driving of the respondent that the accident would speak for itself, the Labour Court proceeded to explain how Ex.M.1 Sketch demonstrated how the accident would have occurred. The Labour Court clearly mentioned that Ex.M.1 sketch proves that the accident happened on a North-South National Highways with a width of just 35 feet. The bus was proceeding towards North. The correct track for the bus is the Western portion of the National Highways. If the bus had gone away from its track and the accident had happened, an inference could have been drawn that only the bus went to the wrong side and caused the accident.

16. In this case the bus was only on its correct track and from the sketch it appears that at the time of the accident, the ABT parcel lorry would have been either parked in the middle of the road or the lorry would have been coming on the reverse side to arrive the National Highway. Parking a lorry unattended, in the middle of the road, occupying almost the major Western portion, without any parking lamp or without any indication must be the major reason for



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the accident. The presence of a petrol bunk near the place of occurrence is also an indication that the ABT parcel lorry would have come to the reverse side after filling petrol, to reach the National Highway. Such a contention as concluded by the Labour Court was also narrated in similar lines in the counter-affidavit filed by the petitioner Corporation in M.C.O.P.No.653 of 2002 and the same has been marked as Ex.W.10 by the Labour Court.

17.It is further brought on record by the Labour Court that the respondent started his duty on 25.11.2000 at about 07.30 pm., took the bus to Dindigul and then came to Trichy at 02.00 in the midnight. Again, he took the bus on 26.11.2000 at 06.00 a.m in morning to Kodaikanal and then he came to Trichy at 08.00 p.m in the night. According to him, he continuously worked for 21 hours and the petitioner Corporation ought to have given rest to him. Instead, he again insisted on going to Chennai trip at 09.00 p.m. Ex.W.1 is a letter given by a Senior Assistant of the petitioner Corporation to the Branch Manager. It is mentioned in the letter that only the respondent insisted to the petitioner Corporation that he has to go to Chennai for important work and only on his compulsion, he was engaged to ply the bus to Chennai. However, the petitioner Corporation ought to have



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been careful and strict in allotting work to a driver, who had already gone for a very long and continuous trip and completed his duty. The version of the petitioner Corporation having deputed the respondent as a Driver to Chennai trip only on his instance cannot be accepted. It is certain that the respondent who had continuously laboured for a long duration in driving the bus and who was tired was again insisted and compelled to go to Chennai for another trip.

18. There is no doubt Ex.M.1 sketch proves that at the time of the accident, the bus was within its correct track. The probability of the ABT parcel lorry coming on the reverse side to enter into the main road, after filling petrol is more probable, than the story of the parked lorry, for the lorry driver having gone to take tea in a nearby shop. The bus driver examined himself as a witness and explained how the accident happened, and also explained that there was no tyre mark of the bus on the road.

19. That apart, in the case in hand, there is no direct oral evidence against the bus driver. Even the materials produced by the petitioner Corporation are not sufficient to conclude that the bus was driven in a high speed at the time of the accident. If the bus could not



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have been stopped immediately or had gone far away after the accident, it could have been inferred that the bus was responsible for the accident. The sketch proves how the accident happened and it does not prove, that the accident happened because of the rashness or negligence of the respondent. Therefore, this Court does not find any perversity in the finding of the Labour Court in concluding that none of the charges framed against the respondent are proved, by the petitioner Corporation before the Labour Court.

20.That apart, the order of dismissal of the respondent from 14.08.2001 is certainly shockingly disproportionate and this Court is also not inclined to interfere with the order passed by the Labour Court by setting aside the dismissal order of the petitioner Corporation dated 14.08.2001.

21.Since the respondent had already attained the age of superannuation, the Labour Court had rightly observed that reinstatement of the respondent could not be ordered. The petitioner had been working as a Driver of the petitioner Corporation for more than 16 years, even after dismissal from service, he was not employed anywhere and he is not in any gainful employment.



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22.Considering all these aspects, the Labour Court passed an order that the respondent is entitled to 50% backwages from the date of dismissal till the date of superannuation with all attendant benefits, monetary benefits and pensionary benefits. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service, cannot easily be measured in terms of money. While passing an order, which has the effect of severing the employer and employee relationship, the source of income of the latter gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of a source of sustenance, and the children are deprived of opportunities for education and advancement in life. These sufferings continue till the competent authority decides on the legality of the action taken by the employer. In the case in hand, the respondent has already attained his age of superannuation and has retired from service.

23.The Hon'ble Supreme Court in the case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and***



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others reported in **(2013) 10 SCC 324**, has held as follows:-

"Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

24.In line with the observation made by the Hon'ble Supreme Court considering the fact that the respondent had suffered



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so many years since 14.08.2001 from the date of being dismissed from service in penury and difficulty and considering the long service as driver in the petitioner Corporation for more than 16 years and marking that he is not employed anywhere in any gainful employment, this Court observes that there is no perversity in the order passed by the Labour Court, Tiruchirappalli in I.D.No.65 of 2004, dated 13.08.2019 and hence, this Court is not inclined to interfere with the same.

25. Accordingly, the Writ Petition is dismissed. The petitioner has deposited an amount of Rs.11,70,965/- before the Labour Court, Tiruchirappalli in C.P.No.9 of 2022 bearing check No. 333818, dated 13.02.2023 and the respondent is permitted to withdraw the same. Hence, W.M.P(MD)No.4285 of 2023 is ordered. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions in W.M.P(MD)Nos.6531 & 12687 of 2022 are closed.

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To

- 1.The Labour Court,
Tiruchirappalli.
- 2.The Managing Director,
Tamil Nadu State Transport Corporation
(kumbakonam Division II) Limited,
Periyamilaguparai,
Tiruchirappalli.

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