

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-06-2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.12201 of 2011

and

M.P No.1 of 2015

The Management of Tamilnadu
State Transport Corporation Ltd.,
Kancheepuram Region (Formerly
known as Puratchi Thalaivar MGR
Transport Corporation, Ltd.,
rep.by its General Manager. ...Petitioner

Vs.

1.The Presiding Officer,
Principal Labour Court,
Chennai.
2.P.Sampath

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari calling for the records relating to I.D.No.824 of 1993 dated 29.03.2010 on the file of the first respondent herein and quash the same.

For Petitioner : Mr.T.Chandrasekaran
For Respondents : Mr.N.Sundaramurthy
for R2.

WEB COPY
O R D E R

Challenging the award of the tribunal dated 29.03.2010 re-instating the petitioner with full back wages, the petitioner has come up before this Court by way of this writ petition.

2. The second respondent is the driver employed by the petitioner and he was charge sheeted for having caused an accident on 02.05.1992, resulting in death of two persons and serious injuries to three persons. Enquiry was conducted and

the enquiry officer submitted a report stating that the charges were proved. Based on the report, a second show cause notice was issued to the petitioner on 16.12.1992 and explanation was offered by the second respondent on 28.12.1992. Not satisfied with the explanation, dismissal order was passed on 17.03.1993.

3. Against the dismissal order, the second respondent raised I.D.No.324 of 1993 before the first respondent seeking for reinstatement with back wages and continuity of service. Initially, an award was passed on 27.03.1996 directing the petitioner/Manager to reinstate the second respondent/worker with continuity of service and other attendant benefits. The said award was challenged by the petitioner herein in W.P.No.17439 of 1996 and the same was disposed of on 21.06.2002 by remanding the matter to the first respondent for fresh disposal. After remanding the matter, the first respondent passed an award to the effect of reinstatement with back wages, continuity of service and all other attendant benefits. The said award is being challenged by the petitioner by way of this writ petition.

4. Heard Mr.T.Chandrasekaran, learned counsel appearing for the petitioner and Mr.N.Sundaramurthy, learned counsel appearing for the second respondent.

5. It is a long run battle right from the year 1992. Even though the petitioner succeeded as early as on 27.03.1996 by getting an award from the first respondent herein, again he was constrained to go before the first respondent, as this Court remanded the matter for fresh disposal. The charge against the second respondent herein is that the accident had occurred due to negligent driving of the vehicle, resulting in loss of two lives. However, the case of the second respondent is that on 02.05.1992 while he was driving the bus enroute Chennai - Kancheepuram, at Theverimpakkam, when he applied break seeing the cyclists suddenly crossing the road, there was a break failure, due to which the said accident occurred.

6. Though the second respondent categorically adduced the evidence, the petitioner/Management, though produced Ex.M4, motor vehicle inspector's report did not choose to examine the motor vehicle inspector, giving an opportunity to the second respondent to cross examine the said witness. Therefore, the tribunal, relying upon the judgment of the Hon'ble Supreme Court in Union of India v. Sardar Bahadur reported in 1972 (4) SCC 618 held against the petitioner/Management. Further, there is a failure on the part of the petitioner in producing the log book which would be decisive on the issue as to whether there had been mechanical defect or not ? In the absence of any document

and non-examination of the Motor Vehicle Inspector, the tribunal rightly came to the conclusion that the order of dismissal is liable to be set aside. Further, the petitioner/Management miserably failed to prove the case against the second respondent. The dismissal of the petitioner from the service is a very harsh punishment and it should be based on evidence.

7. In the case on hand, to prove that there was no mechanical defect, the petitioner should have examined the Motor Vehicle Inspector who issued Ex.M4, Motor Vehicle Inspector's report which speaks that there is no mechanical defect. Further, as rightly held by the first respondent, there was failure on the part of the petitioner to produce the log book which would only prove the issue as to whether there was a mechanical defect or not. Therefore, viewing from any angle, there is failure on the part of the petitioner/Management to prove the case against the second respondent. Therefore, the tribunal has rightly reinstated the second respondent with back wages and continuity of service with all attendant benefits. There is no perversity in the order passed by the tribunal which is based on evidence and therefore the writ petition fails.

8. In the result, the writ petition is dismissed. The petitioner is directed to calculate the amount due to the second respondent and pay the same to him, after deducting the amount already paid, if any, within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

rgr

27.06.2016

This matter having listed on Monday, the 29th day of August, 2016 under the caption "For Being Mentioned" in pursuance of the order of this Court dated 27.06.2016 and made herein in the presence of Mr. T.Chandrasekaran, Counsel for the petitioner and of Mr. N. Sundaramurthy, Counsel for the 2nd Respondent and this Court made the following order:-

This matter is came up for hearing under the caption "for being mentioned" at the instance of the learned counsel for the second respondent.

2. This Court dismissed the writ petition filed by the petitioner/Transport Corporation on 27.06.2016 directing the petitioner to calculate the amount due to the second respondent and pay the same to him, after deducting the amount already paid, if any.

3. The learned counsel for the second respondent would submit that as per Interim order dated 17.11.2011, this Court directed the second respondent to withdraw only 50% of the entire amount of back wages deposited by the petitioner and therefore, the balance 50% is lying on the file of the first respondent. Since there is no direction with respect to withdrawal of the balance amount lying on the file of the first respondent, the learned counsel for the second respondent seeks a direction to that effect in the operative portion of the order dated 27.06.2016.

4. Mr.T.Chandrasekaran, learned counsel for the petitioner has got no objection, as the petitioner had already deposited the entire amount, out of which, 50% was already permitted to be withdrawn by the second respondent.

5. In view of the above submission made on either side, para - 8 of the order dated 27.06.2016 shall read as follows;

" In the result, the writ petition is dismissed with a direction to the petitioner to calculate the amount due to the second respondent and pay the same to him. Since second respondent has already been permitted to withdraw 50% of the entire amount of back wages deposited by the petitioner, the balance 50%, which is lying with the first respondent, is permitted to be withdrawn by the second respondent. Apart from the above amount, which has been deposited and withdrawn by the second respondent, if any other amount has to be paid by the petitioner, the same shall be paid within a period of twelve weeks from the date of receipt of a copy of this modified order."

sms

29.08.2016

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms

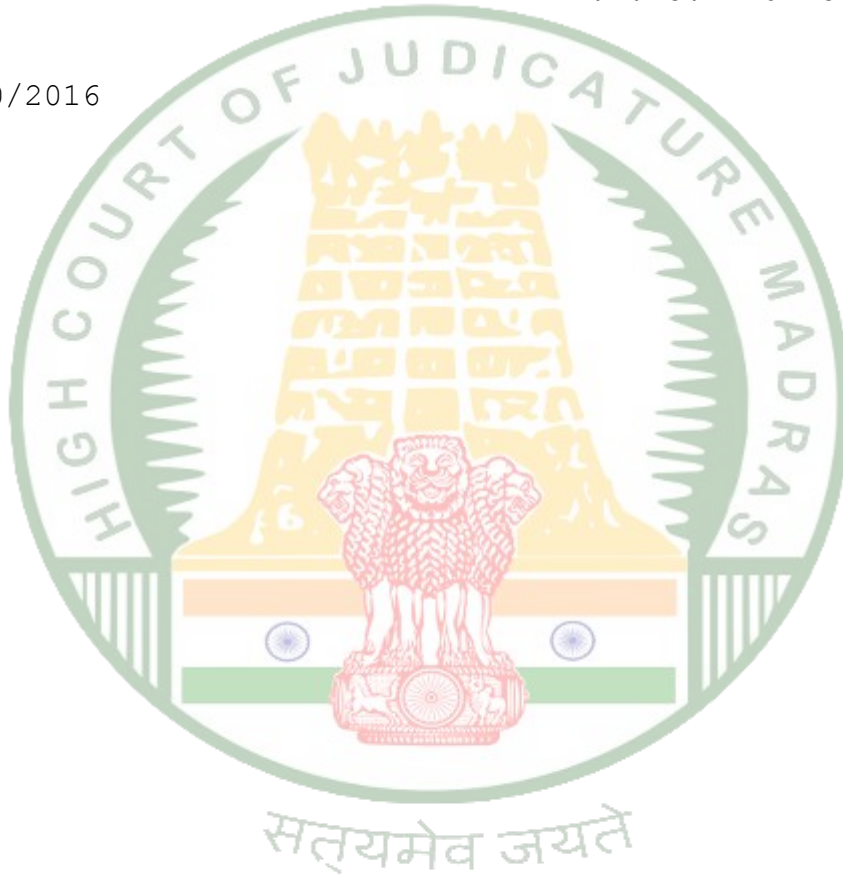
To

The Presiding Officer,
Principal Labour Court,
Chennai.

+1 CC to Mr. T. Chandrasekaran, Advocate Sr.No.36081
+1 CC to Mr. C. Manokaran, Advocate Sr.No.35853

W.P.No.12201 of 2011

GR (CO)
MD : 26/10/2016



WEB COPY