

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Appeal No.1229 of 2016
and
CMP.No.15854 of 2016

Tamil Nadu State Transport Corporation Limited
Salem, rep. by its Managing Director. ... Appellant/Petitioner

vs.

1. The Presiding Officer,
Labour Court, Salem.
2. S.Thilagavathy
3. Mayilsamy
4. Saravanan
(R3 & R4 are mentally retarded and hence,
they are represented by their next friend
and mother, second respondent) ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 02.04.2014 in W.P.No.4203 of 2006 passed
by the learned Single Judge of this Court.

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India praying to issue a Writ of certiorari
calling for the records of the 1st respondent in I.D.No.662 of
2000 dated 7.10.2004 and quash the same.

For Appellant : Mr.P.Paramasiva Doss

JUDGMENT

(Order of the Court was made by HULUVADI G. RAMESH, J.)

The present writ appeal is filed by the State Transport
Corporation against the dismissal of the writ petition preferred
by them.

2. The facts leading to filing of this writ appeal, are as follows:

One R.Subramaniam since deceased joined as a driver in the appellant Transport Corporation on 03.01.1987. While he was on duty, on 27.10.1992, he caused an accident, due to which, six passengers died and 42 others were injured. In view of the same, he was issued with a charge memo. Consequently, an enquiry was conducted. Based on the enquiry report that the charges framed against him were proved, he was dismissed from service, by order dated 10.06.1993. Challenging the same, he filed a writ petition in W.P.No.11991/1993, which was allowed by setting aside the order of dismissal and directing the appellant Transport Corporation to consider the matter afresh. Pursuant to the same, the appellant, after affording an opportunity of personal hearing to the workman, passed a final order, dismissing him from service. As against the said order, the workman raised an Industrial Dispute in I.D.No.662/2000 before the first respondent herein, who, by an award dated 07.10.2004, held that the workman was not fully responsible for the accident and hence, directed the appellant Transport Corporation to reinstate him in service with continuity of service and other attendant benefits, however, without backwages. Aggrieved over the same, the appellant Transport Corporation filed a writ petition in W.P.No.4203 of 2006, which was dismissed by the learned Single Judge of this Court, by an order dated 02.04.2014. Hence, this writ appeal by the appellant Transport Corporation.

3. Heard Mr.P.Paramasivadosh, learned counsel for the appellant and perused the materials placed before us.

4. There is no dispute with regard to the factum and manner of the accident. What was disputed by the appellant in this writ appeal is the award of the Labour Court directing the appellant Transport Corporation to reinstate the workman in service with continuity of service and other benefits and the order of the learned Single Judge confirming the same. According to the learned counsel for the appellant, considering the gravity of misconduct committed by the workman, the award passed by the Labour Court reinstating him in service with continuity of service, is not amounting to punishment. Therefore, the appellant filed W.P.No.4203 of 2006 against the award of reinstatement of the workman in service.

5. During the pendency of the above writ petition, the workman died and his legal heirs also filed a writ petition in W.P.No.6098 of 2008 against the award of the Labour Court with respect to denial of backwages to the workman.

6. The learned single judge of this Court has taken up both the writ petitions for joint hearing and by the impugned

order, has confirmed the award passed by the Labour Court and consequently, dismissed the writ petition filed by the appellant Transport Corporation and disposed of the writ petition filed by the legal heirs of the deceased workman. For better appreciation, the relevant paragraphs of the impugned order are extracted hereunder:

"3. What was challenged before the Labour Court was the validity and correctness of the enquiry officer's report and proportionality of punishment of dismissal from service with regard to charges proved against the Driver. The Labour Court, on appreciation of the available materials, arrived at a conclusion that the driver was not fully responsible for the accident and hence, modified the punishment into one that of reinstatement with continuity of service, but without backwages. Hence, these writ petitions (i) by the Transport Corporation against the order of the reinstatement; and (ii) by legal heirs of the driver since deceased, who died after passing of the award by the Labour Court.

4. While according to the Transport Corporation, considering the gravity of misconduct committed by the erring staff, the award of reinstatement with continuity of service, but without backwages is not one amounting to punishment, the learned counsel for the wife of the deceased driver would contend that the denial of entire backwages is disproportionate to the charges proved against the deceased. This Court is not inclined to accept such contention raised on both sides.

5. The factum and manner of the accident is not denied. The deceased driver, having fully responsible for the accident, contributed to the cause of the accident, because of his rash and negligent driving. The deceased driver ought to have exercised due caution, while driving the vehicle and due to his rash and negligent driving, the accident occurred resulting in death of six passengers and caused injury to 42 others. That being the serious nature of the act committed by the driver, reinstatement with continuity of service, but without backwages, cannot be said to be on higher side. Denial of backwages is sufficient punishment, as dismissal from service is disproportionate to the charges proved against the driver. Thus, for the reasons stated above, this Court is not inclined to interfere with the

award of the labour court and the award stands confirmed.

6. In the result, the Transport Corporation is directed to notionally reinstate the deceased with continuity of service but without backwages and with other monetary benefits from 07.11.2004 and death cum retirement benefits, if any. The whole exercise shall be completed within eight weeks from the date of receipt of a copy of this order.

7. W.P.No.4203 of 2006 filed by the Transport corporation is dismissed. W.P.No.6098 of 2008 filed by the wife of the deceased is accordingly ordered. Consequently, connected Miscellaneous Petition is closed."

7. A reading of the impugned order as extracted above, would reveal that after hearing both sides and on going through the relevant materials, the learned Single Judge has confirmed the award of the Labour Court. While doing so, it has been held that denial of backwages is sufficient punishment, as dismissal from service is disproportionate to the charges proved against the driver. We find no error or infirmity in the order so passed by the learned single Judge of this Court.

8. Therefore, finding no merit, the writ appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Presiding Officer,
Labour Court, Salem.
2. The Tamil Nadu State Transport Corporation Ltd., Salem.
Rep by its Managing Director.

CTR(CO)
YJ(12/11/2016)

W.A.No.1229 of 2016