

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.Nos.23596 of 2010 and 1275 of 2013
and
M.P.Nos.1 of 2010 and 1 and 2 of 2011

W.P.No.23596 of 2010

The Management,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
No.12, Ramakrishna Road,
Salem - 636 007
rep. By its Managing Director

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Salem.

2.P.Murugesan

... Respondents

W.P.No.1275 of 2010

P.Murugesan

... Petitioner

Vs.

1.The Management,
Tamil Nadu State Transport
Corporation Limited,
No.12, Ramakrishna Road,
Salem - 636 007.

2.The Presiding Officer,
Labour Court, Salem.

... Respondents

W.P.No.23596 of 2010 : Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records made in I.D.No.23 of 2007 dated 10.11.2009 on the file of the Labour Court, Salem and quash the same.

W.P.No.1275 of 2013 : Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the issue of the I.D.No.23 of 2007 dated 10.11.2009 on the file of the Labour Court, Salem and quash the portion denying the backwages and other benefits for the interregnum period between the date of dismissal and the date of I.D.No.23 of 2007 and direct the respondents to pay such backwages for the said interregnum period on par with the petitioner's services.

For Petitioner : Mr.R.K.Gandhi
in W.P.No.23596 of 2010
Mr.D.Ashok Kumar
in W.P.No.1275 of 2013

For Respondents : Mr.D.Ashok Kumar for R1
R1 - Court
in W.P.No.23596 of 2010
Mr.R.K.Gandhi for R1
R2 - Court
in W.P.No.1275 of 2013

COMMON ORDER

The petitioners in W.P.No.23596 of 2010 and 1275 of 2013 have approached this Court seeking the following reliefs:

to issue a writ of certiorari to call for the records made in I.D.No.23 of 2007 dated 10.11.2009 on the file of the Labour Court, Salem and quash the same.
and

to issue a writ of certiorarified mandamus to call for the records pertaining to the issue of the I.D.No.23 of 2007 dated 10.11.2009 on the file of the Labour Court, Salem and quash the portion denying the backwages and other benefits for the interregnum period between the date of dismissal and the date of I.D.No.23 of 2007 and direct the respondents to pay such backwages for the said interregnum period on par with the petitioner's services.

2.For the sake of convenience, the parties are referred to as per their rank in W.P.No.23596 of 2010.

3.The case of the petitioner is that the second respondent/workman was employed as Driver in the petitioner Corporation. He was originally appointed on 22.02.1984 and was lastly worked at Attur Branch. On 24.08.2001, a passenger

travelling on the roof top of the bus in which the petitioner was driving fell down and succumbed to his injuries. In respect of the said incident a charge memo was issued on 03.12.2001 and the second respondent/workman submitted his explanation dated 25.01.2002 denying the charge that he was negligent in driving the vehicle. However, an enquiry was conducted into the charge. On conclusion of the enquiry, report was submitted holding the charge proved against the second respondent/workman. After obtaining explanation to the enquiry report and not being satisfied with the same, a second show cause notice was issued proposing the punishment of dismissal from service on 26.04.2002. The second respondent/workman submitted his explanation to the proposed penalty on 16.05.2002.

4.While the said disciplinary proceeding was pending against him, the second respondent/workman was involved in another accident resulting in the death of the pedestrian. Therefore, he was again issued with a charge memo dated 29.03.2002 and enquiry was initiated and in that enquiry also, he was found guilty of the charges. Once again, second show cause notice was issued proposing the punishment of dismissal from service on 10.06.2002. However, not satisfied with the explanation, finally the petitioner Corporation has passed an order on 23.09.2003 dismissing the second respondent/workman.

5.Against the order of dismissal, the second respondent/workman raised a dispute in I.D.No.23 of 2007 before the first respondent. After advertng to the materials and evidence placed on record, the first respondent labour Court passed the impugned award dated 10.11.2009 by setting aside the order of dismissal dated 23.09.2003 and directing the corporation to reinstate the workman in service with backwages from the date of the award and with all other benefits like continuity of service. The said award passed in favour of the workman is put to challenge by the petitioner corporation in W.P.No.23596 of 2010.

6.The second respondent/workman has also filed a writ petition in W.P.No.1275 of 2013 assailing the same award which restricted the payment of backwages from the date of the award and not from the date of dismissal from service.

7.Learned counsel appearing for the petitioner corporation would submit that the second respondent/workman was also proceeded with criminally for causing the death of two passengers by rash and negligent driving. However, it appears that the criminal case ended in acquittal. However, in the departmental enquiry conducted against the second respondent/workman, it was proved that the second respondent/workman was driving the vehicle in a rash and

negligent manner and unfortunately, due to the conduct of the petitioner, two persons have died. Therefore, the corporation had rightly proposed the penalty of dismissal from service and thereafter, not satisfied with the explanation by the second respondent/workman, the corporation was left with no option except to impose a harsh penalty of dismissal from service since in a matter of few months of his employment, the second respondent/workman was involved in two fatal accidents.

8. According to the learned counsel appearing for the petitioner corporation, the first respondent labour Court, without properly appreciating the materials placed on record, had come to the wrong conclusion in favour of the second respondent/workman stating that the second respondent/workman was not responsible for both the accidents and held that the findings given in the departmental enquiry were perverse and cannot be acted upon by the disciplinary authority for imposing the penalty of dismissal from service.

9. At this, Mr. D. Ashok Kumar, learned counsel appearing for the second respondent/workman would submit that the award passed by the labour Court was perfectly in order and the labour Court had considered all the materials and the evidence made available in the departmental enquiry and after due appreciation and examination of the evidence both oral and documentary, had come to a clear conclusion that the second respondent/workman was not at all responsible for causing the fatal accident and there was no evidence available in the departmental enquiry to hold the second respondent/workman guilty of rash and negligent driving as made out in the charge memo. Learned counsel would draw the attention of this Court to the findings of the first respondent labour Court and the final award passed therein as found in paragraphs 15 to 19 are extracted below:

15. So, for the aforesaid reasons, I have no option except to hold that the petitioner was able to establish that the findings of the enquiry officer regarding the accident occurred on 24.08.2001 and 19.03.2002 holding the petitioner guilty for the above accidents which resulted in the death of passenger and pedestrian respectively are not based on record and so, the same are perverse.

16. It has been pointed out on the side of the respondent that the petitioner was having past records regarding the accidents in his credit. But as seen from Ex.W.5 the petitioner has raised the dispute by filing petitioner U/sec.2K of I.D. Act regarding the punishment imposed upon him in connection with the previous accidents. So, as rightly pointed out on the side of the petitioner till that dispute is over the

petitioner cannot be said to have bad records of previous accidents.

17.The dismissal order dated 23.09.2003 was based on the findings of the enquiry officer regarding the accident occurred on 24.08.2001 and 19.03.2002. Already we have discussed and have come to the conclusion that the findings of the enquiry officer regarding the above accidents holding the petitioner guilty of the same are not based on records and so they are perverse. In these circumstances, the dismissal order dated 23.09.2003 which is based on the findings of the enquiry officer has to be held as illegal and the same is liable to be set aside.

18.Now, coming on to the reliefs claimed by the petitioner, since the dismissal order is set aside the petitioner is entitled for reinstatement. Regarding the backwages, aggrieved by the dismissal order dated 23.09.2003 this petitioner has filed this claim application only in the year 2007. So, there is a delay of 4 years. It is settled law that the delay in filing claim application cannot knock out the workman from disputing the dismissal order. But at the same time for the unexplained delay caused by the petitioner in filing this application he is not eligible for wages from the date of dismissal till the date of filing of this application. He is entitled for backwages and continuity of service only from the date of filing of this petition. The petitioner is entitled to the reliefs as above. Points are answered accordingly.

19.In the result, award is passed setting aside the dismissal order dated 23.09.2002 and directing the respondent to reinstate the petitioner in service with backwages and continuity of service from the date of filing of this petition. Considering the facts and circumstances of the case, there is no order as to costs.

He would further submit that the award passed by the labour Court is a well considered award and does not call for any interference from this Court.

10.This Court has considered the rival submissions of the learned counsels for the parties and perused the materials and the pleadings placed on record. As rightly contended by the learned counsel for the second respondent/workman, the labour Court after adverting to the various materials which were made available before it and before the departmental enquiry had come

to a clear finding in favour of the second respondent/workman reasoning that the finding rendered in the departmental enquiry proceedings was perverse and the charges were not made out against the second respondent/workman. Such finding on fact by the labour Court cannot be disturbed or re-appreciated by this Court exercising its jurisdiction of judicial review under Article 226 of the Constitution of India. This Court had also perused the materials and satisfied that though it was very unfortunate that two persons have died in the accidents where the second respondent/workman was involved but as held by the labour Court, the second respondent/workman cannot be held fully responsible for causing the death of two persons.

11. According to the materials and the evidence available, the first passenger died because he was travelling on roof top of the bus and fell down, for which, the driver could not be held responsible. As regards the second incident is concerned, as the second respondent/workman was driving the vehicle, a pedestrian had suddenly crossed the road and hit the bus and due to the impact, he also died. Although there is some element of negligence can be inferred from the materials above however the second respondent/workman cannot be entirely blamed for causing the death of two persons. Moreover, the findings by the labour Court on the factual aspect that the report of the departmental enquiry was perverse cannot be re-appreciated by this Court.

12. However, considering the fact that the second respondent/workman was dismissed from service as early as 23.09.2003 and suffered non-employment for nearly 14 years, it is just and equitable that the award is modified to the extent that the second respondent/workman is entitled to only 50% of the backwages from the date of the award till the date of reinstatement. In all other respects, the award of the labour Court is confirmed. The writ petition in W.P.No.23596 of 2010 is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

13. In view of the order passed in W.P.No.23596 of 2010, this Court finds no merit in the writ petition in W.P.No.1275 of 2013 filed by the second respondent/workman and therefore, the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Managing Director,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
No.12, Ramakrishna Road,
Salem - 636 007.
2. The Presiding Officer,
Labour Court, Salem.

+2cc's to Mr.R.K.Gandhi, Advocate, S.R.Nos.69967 & 69968

W.P.Nos.23596 of 2010 and 1275 of
2013

CS IV
CA(23/10/2017)



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