

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.34571 of 2003

And

W.P.M.P.No.13800 of 2004

The Management
Tamilnadu State Transport Corporation,
(Villupuram Div.II) Ltd.,
Rangapuram,
Vellore - 632 009. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Vellore.

2.G.Stalin ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the award dated 18.3.2003 made in I.D.No.56 of 2001 on the file of Labour Court, Vellore and quash the same.

For Petitioner : Mr.V.R.Kamalanathan
For Respondents : Mr.R.Rajaram for R2

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records pertaining to the award dated 18.03.2003 made in I.D.No.56 of 2001 on the file of Labour Court, Vellore and to quash the same.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent.

3.For the sake of convenience, the petitioner/ Tamilnadu State Transport Corporation (Villupuram Div.II) Limited, Rangapuram, Vellore would be hereinafter called as 'the employer' and the second respondent/ G.Stalin would be

hereinafter called as 'the employee'.

4.The brief facts of the case are as follows: The employee joined the services of the employer as a driver in the year 1992. On 30.03.2009, the employee was in duty driving the bus bearing Registration No.TN23 N-1351 on the route 102PP/J service from Chennai to Vellore. At about 13.00 hours, while he was driving the bus and was proceeding towards Vellore, near Chinnamalai, the bus hit against the woman who came from the right side of the road to the left side of the road in order to cross the road, causing fatal injuries which resulted in her death on the spot.

5.Thereafter, for the negligence on the part of the employee, the employer issued a charge memo on 27.05.2000. On receipt of the charge memo, the employee submitted his explanation dated 22.06.2000. Being not satisfied with the explanation submitted by the employee, after conducting a detailed enquiry by appointing an enquiry officer and following the principles of natural justice, the employer drawn adverse report against the employee. Thereafter, the employee was issued with draft of the final order on 26.08.2000 and further explanation was also sought for from him. The employee also submitted his further explanation on 08.09.2000. Thereafter, vide proceedings of the employer dated 30.11.2000, the employee was terminated from his service.

6.Aggrieved by the said dismissal order passed by the employer, the employee raised industrial dispute before the first respondent in I.D.No.56 of 2001. The first respondent after conducting detailed enquiry and on perusal of the entire materials and facts held in favour of the employee on the ground that the accident was not occurred due to the rash and negligent driving of the employee. Since the employer did not produce any document to show that the death was occurred due to the accident and since there is no post mortem certificate marked either before the enquiry officer or before the labour court and also noting that there are no blood stains available in the accident place, the first respondent/ labour court held that the order of the fact finding authority is not correct. Accordingly, the labour court set aside the dismissal order passed by the employer and directed the employee to be reinstated in service with full backwages.

7.The learned counsel appearing for the petitioner/ employer would contend that the second respondent/ employee is a habitual offender and he was often punished by the employer and this is the third fatal accident caused by the employee's rash and negligent driving and prayed that no lenient view be taken in favour of the employee.

8.The learned counsel also relied upon the decision of the

Hon'ble Supreme Court reported in 2007 (2) SLR 441 (Managing Director, North East K.R.T.C. Vs. Devidas Manikrao Sadananda), wherein, paragraphs 8 and 12 reads as follows:

"8.As stated above, the short question which arises for determination in the present case is: whether the Labour Court had erred in the facts and circumstances of this case is not invoking the doctrine of *res ipsa loquitur*.

12.In the case of Cholan Roadways Ltd. v. G. Thirugnanasambandam : 2005 (3) SCC 241 : [2005 (1) SLR 612 (SC)], this Court held that in certain case the accident speaks for itself that in such cases the management has only to prove the accident and nothing more; and that in such cases the driver has to establish that the accident happened due to some cause other than his own negligence. Once the maxim '*res iposa loquitur*' is found to be applicable, the burden of proof would shift on the delinquent. In such cases, the nature of impact has to be seen because it indicates that the vehicle was being driven rashly and negligently. In such cases, the burden of proof was on the driver to show that the offending vehicle was not driven by him rashly and negligently. In the said case, it was further held that the learned Single Judge of the High Court in that case had erred in observing that unless witnesses (passengers) were examined by the management it was not possible to draw any inference of misconduct against the workman. In this connection, it was held that the principles of Evidence Act have no application in a domestic enquiry. It was observed that the principles of natural justice are required to be complied with in a domestic enquiry, however, they cannot be stretched too far nor can they be applied in a vacuum. In the case of Cholan Roadways (supra) this Court came to the conclusion that in cases of accident of the above nature it was not necessary as a relevant factor to examine before the enquiry officer passengers of the bus and that the Labour Court had failed to apply the correct standard of proof in relation to the domestic enquiry, which is 'preponderance of probability' and thus a case for judicial review stood, clearly made out by the Corporation.

Accordingly the matter is remitted to the Labour Court to decide whether on the facts and circumstances of this case the above maxim 'res ipsa loquitur' applies or not."

9. On a perusal of the judgment cited supra, there is no doubt that it is for the employee to establish that he was not negligent at the time of accident but the present case on hand is different from the decision cited supra. The accident is admitted, however, the death of the person was not occurred due to the accident. The employer did not establish by marking post mortem certificate or any oral evidence. When there is no document to show that the death was caused due to the accident it is not possible for High Court while exercising power under Article 226 of the Constitution of India for re-appreciating the evidence in order to fix the responsibility against the employee.

10. It is relevant to note here that the power of the High Court under Article 226 of the Constitution of India to interfere with the order of the fact finding authority is limited. Only when the order of the fact finding authority is contrary to the legal principles and when there is error on the face of record, the High Court can interfere.

11. The learned counsel appearing for the second respondent/employee would rely upon the decision of the Supreme Court reported in (2010) 3 Supreme Court Cases 637 (Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana)), wherein, the relevant paragraphs reads as follows:

"14. In a recent judgment of this Court in Harjinder Singh V. Punjab State Warehousing Corpn., the Labour Court, Gurdaspur, by its award directed reinstatement of the workman with 50% back wages, but the award of the Labour Court was modified by a learned Single Judge of the Punjab and Haryana High Court in the writ petition and this Court has held that the order of the learned Single Judge of the High Court was liable to be set aside only on the ground that while interfering with the award of the Labour Court, the learned Single Judge did not keep in view the parameters laid down by this Court for exercise of jurisdiction by the High Court under Articles 226 and/or 227 of the Constitution.

15. Learned Brother G.S. Singhvi, J. in his opinion in Harjinder Singh, has observed that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV of the Constitution including Articles 38, 39(a) to (e), 43 and 43-A thereof. Learned Brother Asok Kumar Ganguly, J. agreeing with learned Brother G.S. Singhvi, J. has also observed that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it.

16. Section 11-A of the Act clearly provides that:

"11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:"

17. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to the discharge or dismissal of a workman

and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct reinstatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India will not interfere with the same, except on well-settled principles laid down by this Court for a writ of certiorari against an order passed by a court or a tribunal."

12. From the perusal of the above, it is clear that High Court cannot interfere with the order of the Labour Court unless that order is perverse or shocking the conscience. Hence, I am not inclined to interfere with the order passed by the first respondent. However, it would be appropriate to modify the order with regard to the backwages, since admittedly the petitioner was not reinstated into service right from his termination, even after the award to till date and he is receiving the 17-B wages right from the date of filing of the writ petition.

13. In similar situation, the Hon'ble Apex Court in its decision reported in (2005) 6 SCC 224 (M.L. Binjolkar Vs. State of M.P.) has held as follows:

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya, Rajendra Prasad Arya v. State of Bihar, Sonapat Coop. Sugar Mills Ltd. v. Ajit Singh, Haryana State Goop. Land Development Bank v. Neelam, Manager, Reserve Bank of India v. S. Mani and Allahabad Jal Sansthan v. Daya Shankar Rai we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view. That being so, we do not think it appropriate to interfere with the quantum of 50% fixed by the High Court."

14.Hence, to meet the ends of justice, in this case, it would be relevant to modify the order of the first respondent dated 18.03.2003 made in I.D.No.56 of 2001. I am of the view it would be appropriate to issue a direction to the petitioner/ employer to reinstate the second respondent/ employee with 50% of backwages as early as possible.

15.The writ petition is accordingly disposed of. No Costs. Consequently, the connected miscellaneous petition is also closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Vellore.

+1cc to Mr.V.R.Kamalanathan, Advocate SR.No.61856

W.P.No.34571 of 2003

And

W.P.M.P.No.13800 of 2004

SDR 10.10.2017



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