

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2017

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.36706 of 2004 and 25002 of 2005

And

W.P.M.P.Nos.44062 of 2004, 9198 of 2005
and 15413 of 2006 and W.V.M.P.No.642 of 2005

W.P.No.36706 of 2004:

Tamilnadu State Transport
Corporation (Salem) Ltd
rep. by its Managing Director
Dharmapuri.

... Petitioner

Vs.

1.The Presiding Officer
Labour Court, Salem.

2.G.Dharumarajan

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 1st respondent in I.D.No.488 of 2002 dated 11.12.2003 and quash the same.

For Petitioner : Mr.Paramasivadoss
For Respondents : Mr.K.Elango

W.P.No.25002 of 2005:

G.Dharmarasan

... Petitioner

Vs.

1.The Presiding Officer
Labour Court, Salem

2.Tamilnadu State Transport
Corporation (Salem) Ltd
rep. by its Managing Director
Dharmapuri.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in I.D.No.488 of 2002 dated 11.12.2003 and quash the same in so far as depriving the backwages to the petitioner and consequently direct the 2nd respondent to pay the petitioner backwages from the date of dismissal to the date of award, award costs.

For Petitioner : Mr.K.Elango

For Respondents : Mr.Paramasivadosh for R2

C O M M O N O R D E R

These writ petitions have been filed seeking issuance of Certiorari to call for the records of the first respondent in I.D.No.488 of 2002 dated 11.12.2003 and to quash the same.

2.Heard the respective learned counsel appearing on either side.

3.For the sake of convenience, Tamil Nadu State Transport Corporation (Salem) Limited, represented by its Managing Director, Dharmapuri, would be hereinafter referred to as 'employer' and G.Dharumarajan, would be hereinafter referred to as 'employee'.

4.The employer filed the writ petition in W.P.No.36706 of 2004, challenging the award passed by the first respondent in I.D.No.488 of 2002, wherein, the first respondent modified the punishment of dismissal from service imposed on the employee by directing the employer to reinstate the employee into service with continuity of service and other benefits, but without backwages. The employee filed the writ petition in W.P.No.25002 of 2005, challenging the very same award for continuity of backwages from the date of dismissal from service.

5.The brief facts of the case are as follows: The employee was appointed as a Driver in the employer Corporation on 12.12.1996. While so, the employee was issued with a charge memo dated 03.05.2002, alleging that on 24.03.2002 at 1.45 p.m., when the petitioner was driving the bus bearing No.TN 29 N 1326 plying on the Bangalore to Krishnagiri route, he dashed against the TVS 50 which was coming from the opposite direction, as a result of which, four persons who travelled in the TVS 50 died on the spot. F.I.R. was also launched against the employee. The employee also gave an explanation on 06.05.2002 contending that the accident had occurred not due to his negligence, but

the entire accident happened due to the rider and pillion rider of the TVS 50 who was under the influence of alcohol. Not satisfied with the explanation given by the employee, the employer decided to proceed with the charge memo and conducted domestic enquiry by appointing Enquiry Officer and gave a report on 05.07.2002.

6. On 11.07.2002, the employer issued a show cause notice calling upon the employee for his explanation to the findings of the Enquiry Officer. Thereafter, on 01.08.2002, the employee gave suitable explanation to the employer for the above show cause notice. The employer, not satisfying with the explanation, passed the order of dismissal from service. Aggrieved by the same, the employee raised Industrial Disputes before the first respondent and the same was assigned I.D.No.488 of 2002. After analysing the entire facts, the first respondent modified the punishment to that of reinstatement with continuity of service and without backwages. Aggrieved by the same, both the employee and the employer have filed these writ petitions before this Court.

7. Mr. K. Elango, learned counsel appearing for the employee would submit that the respondent has taken a contra stand before the MACTOP as well as the Labour Court, wherein, before the MACTOP, the employer filed a counter disputing the accident and fixed the negligence on the part of the TVS 50 driver and supported the employee by stating that the accident happened not due to any act of the employee. However, before the Labour Court, the employer stated that the entire accident has happened due to the negligence of the employee. The indifferent stand taken by the employer is not permissible in the eye of law.

8. In support of his argument, learned counsel relied upon the decision of the Hon'ble Division Bench of this Court in the case of Tamil Nadu State Transport Corporation (Kumbakonam Dn-II) Ltd., Periyamilaguparai, Tiruchirapalli - 620 001, rep. by its Managing Director and another vs. P. Karuppusamy, dated 23.11.2007 made in W.A.No.2399 of 2003, the relevant portion of which reads as follows:

"23. Learned counsel for the respondent also garnered support from a decision of the Apex Court in Kali Prasad v. Dy. Director of Consolidation, AIR 2000 Supreme Court 3722, for a legal proposition that the finding recorded by the civil court on the question of jurisdictional fact is binding on the parties to the suit. He further placed reliance upon a decision of the Supreme Court in Venkatappa alias Moode v. Abdul Jabbar, 2006 (9) Supreme Court Cases 235, in which it was decided that the parties are

bound by the pleadings in the statements filed by them and they cannot be permitted to put forth a new case.

24. The principles laid down in the aforesaid rulings are squarely applicable to the facts of the present case. The appellant Corporation, having taken a plea that the driver of the bus was not responsible for the accident, could not turn around to say that he was responsible for the accident. As such, it is very much bound by the pleadings raised by it before the Tribunals and this Court. The law is well settled as to the aspect that the standard of proof in both the proceedings before the criminal court and the domestic enquiry officer are entirely different. However, since the Corporation has consciously raised the contention in favour of the bus driver before the judicial fora, it is precluded from proceeding against him in departmental proceedings. Though the extent of proof is sufficient to the commission of delinquency in the matter of departmental proceedings, the management could not lay its hands on the workman, detrimental to his interest, after defending him before various judicial fora and accepting the findings of the Motor Accident Claims Tribunal, Karur. Further, in the dismissal order, dated 09.12.1998, it is mentioned that even though a scrutiny of the service records would show that the respondent was not at all penalised at any point of time, since he caused a fatal accident, it was proposed to dismiss him from service, which shows that the past records of the respondent were also clean."

9. The learned counsel also relied upon another decision of the Madurai Bench of this Court made in W.A.(MD) No.16 of 2013 dated 04.02.2015 in the case of J.Ramraj Vs. The Management, Tamil Nadu State Transport Corporation and others, wherein, the above cited decision was relied upon and paragraph 14 of the same, reads as under:

"14. At this stage, it would be useful to refer to paragraph 24 of the judgment rendered by this Court in the case of Tamil Nadu State Transport Corporation (Kumbakonam Dn-II) Ltd., Periyamilaguparai and another v. P.Karuppusamy], which would read thus:

"24.The principles laid down in the aforesaid rulings are squarely applicable to the facts of the present case. The appellant Corporation, having taken a plea that the driver of the bus was not responsible for the accident, could not turn around to say that he was responsible for the accident. As such, it is very much bound by the pleadings raised by it before the Tribunals and this Court. The law is well settled as to the aspect that the standard of proof in both the proceedings before the criminal court and the domestic enquiry officer are entirely different. However, since the Corporation has consciously raised the contention in favour of the bus driver before the judicial fora, it is precluded from proceeding against him in departmental proceedings. Though the extent of proof is sufficient to the commission of delinquency in the matter of departmental proceedings, the management could not lay its hands on the workman, detrimental to his interest, after defending him before various judicial fora and accepting the findings of the Motor Accident Claims Tribunal, Karur.....""

10.Considering the above decision of this Court squarely applies to the case on hand, I am not inclined to interfere with the order passed by the first respondent. Hence, the writ petition filed by the employer i.e., W.P.No.36706 of 2004 is dismissed.

11.The learned counsel appearing for the employer contented that the modified punishment imposed by the Labour Court do not warrant any interference. The Labour Court while exercising the powers under Section 11 A of the Industrial Disputes Act deems it fit that it has power to modify the punishment. Hence, interference of the modified punishment is not sustainable under Article 226 of the Constitution of India, for re-appreciating the facts arrived before the Labour Court and prayed for dismissal of the writ filed by the employee.

12.There is some force in the argument of the learned counsel appearing for the employer. Admittedly, there are some lives lost due to the accident, while employee in duty. Hence, this Court is not inclined to interfere with the order passed by the Labour Court. Accordingly, the writ petition filed by the employee i.e., W.P.No.25002 of 2005 is also dismissed.

13.In the result, this Court is not inclined to interfere with the order passed by the first respondent in I.D.No.488 of 2002 dated 11.12.2003. Hence, both the writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer
Labour Court, Salem.

2.Tamil Nadu State Transport
Corporation (Salem) Limited
rep. by its Managing Director
Dharmapuri.

+ 2 ccs to Mr.K. Elango, Advocate Sr.50474

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and 25002 of 2005
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