

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1863 of 2018
and
C.M.P.No.14962 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation
(Coimbatore Division-II) Ltd.,
Chennimalai Road, Erode-638 001,
Erode District ... Appellant

Vs.

1.The Joint Commissioner of Labour (Conciliation)
D.M.S.Compound,
Chennai - 600 006.

2.R.Sathiyamoorthy ... Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 04.04.2016, in W.P.No.14618 of 2012.

Prayer in WP.No.14618/2012:Writ petition filed under Art 226 of the Constitution of India seeking for a writ of certiorari to call for the records made in Approval Petition No.84/2004 dated 14.7.2011 on the file of the 1st respondent and quash the same.

For Appellant : Mr.S.Sairaman

For R1 : No Appearance

For R2 : Mr.R.Krishnaswamy

ORDER

(Judgment of this Court was made by SUBRAMONIUM PRASAD, J.)

The present writ appeal is directed against the order dated 04.04.2016, passed by the learned Single Judge of this Court, in W.P.No.14618 of 2012.

2. The facts in brief in this appeal are that the second respondent joined the services of the appellant-corporation on 14.12.1987, as a driver. On 24.07.2003, there was an accident, resulting in loss of life of a lady. The second respondent was placed under suspension.

3. A show cause notice was issued to him and explanation was sought for. In his reply, it was stated that when he was trying to avoid hitting an old woman who suddenly crossed the road, and turned the bus to his left, the accident occurred. Charges were framed against the second respondent. In the reply to the charge memo, it was stated that the deceased was mentally retarded and that the accident occurred, when she came very near to the vehicle. After perusing the documents and after hearing the witnesses, the Enquiry Officer, came to the conclusion that the victim was mentally retarded.

4. A second show cause notice was issued as to why 2nd respondent, he should not be removed from service. After considering the explanation of the second respondent, he was removed from the services of the Corporation by order dated 29.01.2004 with effect from 31.01.2004.

5. An approval petition No.84 of 2004, was preferred by the Corporation before the Joint Commissioner of Labour (Conciliation), Chennai, under Section 33(2)(b) of the Industrial Disputes Act, 1947.

6. After perusing the materials, the Joint Commissioner of Labour (Conciliation), Chennai, held that there was contributory negligence on the part of the victim, who was mentally retarded and the accident was not caused due to the default of the second respondent alone.

7. On 14.07.2011, the Joint Commissioner of Labour (Conciliation), Chennai, came to the conclusion that the punishment of dismissal from service is disproportionate to the gravity of misconduct and therefore, dismissed the approval petition.

8. Challenging the order of the Joint Commissioner of Labour (Conciliation), Chennai, dated 14.07.2011, the Corporation filed W.P.No.14618 of 2012.

9. Learned Single Judge held that pending disposal of the writ petition, the second respondent has already been reinstated in service, and that having regard to the facts of the case, directed the appellant-corporation, to impose a punishment of stoppage of one increment for two years with cumulative effect. The second respondent has not challenged this portion of the order.

10. Heard the learned counsel for the appellant, as well as the second respondent and perused the materials available on record.

11. It is contended by the learned counsel for the appellant that since it is a case of an accident causing death, learned Single Judge has erred in directing reinstatement of the second respondent. In support of his contention, learned counsel for the appellant relied on a judgment in Management of TNSTC (Coimbatore) Ltd., Vs. M.Chandrasekaran, reported in A.I.R. 2016(8) Scale 477. In the reported case, it was found that the accident took place due to the high speed of the vehicle, and the impact was so severe that the two vehicles were extensively damaged. Passengers travelling in the vehicle suffered fatal injuries, resulting in death of five persons on the spot and four persons in the hospital, besides injuries to nine persons. The Hon'ble Supreme Court invoked the doctrine of Res ipsa loquitur and held that burden shifted on the respondent therein, who was in control of the bus, to establish that the accident did not happen, due to negligence on his part. The fact situation of the present case is entirely different and therefore Judgment of the Hon'ble Supreme Court will not apply to the case on hand.

12. Perusal of the records, would show that the second respondent has attained the age of superannuation. It would therefore not be proper to convert the punishment of stoppage of one increment for two years with cumulative effect into that of a dismissal, after his superannuation.

13. In any event, the appellant-Corporation has not shown any material, which would demonstrate that the finding of the Labour Court as regards contributory negligence of the victim, is wrong. The second respondent alone cannot be held responsible for the accident, in view of finding of contributory negligence, on the part of the victim.

14. In the light of the above discussion, writ appeal is dismissed. There is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner of Labour (Conciliation)
D.M.S.Compound,
Chennai - 600 006.

+1cc to Mr.V.Ajoykhose, Advocate SR.NO.60201

KS (CO)
sm:26.9.2018

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