

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.01.2018
CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.2276 of 2010

The Management of Metropolitan
Transport Corporation Ltd.,
Pallavan Salai,
Chennai 600 002.

... Petitioner

Vs

1.Thiru.E.Loganathan

2.The presiding Officer,
III Additional Labour Court,
Chennai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records pertaining to the Award dated 16.06.2009 made in I.D.No.431 of 2002 on the file of the second respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram
For Respondents : Mr.V.Ajoy Khose for R1

O R D E R

Heard Mr.M.Chidambaram, learned counsel for the petitioner and Mr.V.Ajoy Khose, learned counsel appearing for the first respondent.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Certiorari, to call for the records pertaining to the Award dated 16.06.2009 made in I.D.No.431 of 2002 on the file of the second respondent herein and quash the same."

3. The case of the petitioner is as follows:-

The petitioner is a Transport Corporation having aggrieved by the award of the Labour Court, ordering reinstatement of the first respondent workman with 20% back wages in I.D.No.431 of 2002 dated 16.06.2009, the present writ petition is filed.

4. The first respondent was appointed as Driver in the year 1997. During the period of his probation, he was involved in fatal accident on 10.07.1999. According to the petitioner Corporation, the first respondent workman hit the cyclist on the road and he died due to the impact of the accident. An FIR was lodged and also a charge memo was issued on 22.08.1999. The

first respondent workman was originally placed under suspension, but, subsequently, the same came to be revoked on 17.01.2000.

5. Not satisfied with the explanation offered by the first respondent workman, a disciplinary enquiry was conducted and on the basis of the report of the disciplinary enquiry, the petitioner Corporation removed the first respondent workman from service on 15.12.2001. The first respondent workman had participated in the enquiry and according to the petitioner, he was given due opportunities to effectively put up his defence. The first respondent workman's appeal to the higher authority against the order of removal from service, was also rejected on 19.02.2002. Against which, the first respondent workman raised an Industrial Dispute and after adverting to the evidence and various materials placed for consideration, the second respondent Labour Court passed an award on 16.06.2009, directing reinstatement of the workman with 20% back wages.

6. The second respondent Labour Court has come to the conclusion that there was a contributory negligence on the part of the cyclist who died in the fatal accident, the workman alone cannot be held responsible for the said accident. In fact, the Labour Court had given a categorical finding of this aspect, on the basis of the contents of the FIR lodged by the police. Since an unfortunate accident had happened due to the negligence of the cyclist also, the order of removal from service imposed on the workman was too excessive and harsh. The Labour Court thought fit to direct reinstatement of the workman only with 20% back wages.

7. The learned counsel for the petitioner Corporation would strenuously contend that even during the period of probation, the workman had caused fatal accident and therefore, the Corporation thought fit not to retain the workman in service as that would be against the public interest. Therefore, the Corporation had initiated the disciplinary action and imposed a penalty of removal from service, which cannot be faulted at all. Alternatively, the learned counsel would submit that, in any event, the grant of 20% back wages is not justified under the circumstances, since the workman caused fatal accident, in which, a member of the public had died.

8. The learned counsel for the first respondent workman would submit that the Labour Court has given a sound reasoning for interfering with the punishment imposed on the petitioner as aforesaid and therefore, the award passed by the Labour Court does not call for interference, unless the finding of the Labour Court is found to be perverse.

9. This Court exercising its jurisdiction under Article 226 of the Constitution of India, cannot unsettle the award. This

Court is in agreement with the contention made on behalf of the learned counsel for the first respondent workman. However, the fact remains that the Labour Court did not give clean chit to the workman, the findings of the Labour Court was to the effect that there was contributory negligence on the part of the victim, which means that there was a negligence on the part of the workman also. Therefore, as rightly contended by the learned counsel for the Corporation that grant of 20% back wages is uncalled for and the same is without any justification.

10. However, the Labour Court has rightly interfered with the quantum of penalty of removal from service and ordered reinstatement, the direction of the Labour Court, in the opinion of the Court does not suffer from any legal infirmity. However, as regards the payment of 20% back wages, the same is found to be unjustified in the facts and circumstances of the case and therefore, the award of the Labour Court dated 16.06.2009 in I.D.No.431 of 2002, is modified to the above extent.

11. In the above circumstances, the writ petition is partially allowed. The petitioner Corporation while reinstating the petitioner, is also directed to make the contribution that is payable towards Provident Fund, in respect of the first respondent workman. The order of this Court shall be complied with by the petitioner Corporation within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gsk

To

The presiding Officer,
III Additional Labour Court,
Chennai.

+1cc to Mr.V.Mr.M.Chidambaram,advocate,in sr.no.955

+1cc to Mr.V.Ajoy Khose,advocate,in sr.no.924

W.P.No.2276 of 2010

br(co)

GSP(17/02/2018)