

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.25826 of 2010 and
M.P.No.1 of 2010

The Management of
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Erode Region,
No.45, Chennimalai Road,
Erode-1,
Rep by its Managing Director. Petitioner

Vs

1.The Presiding Officer,
Labour Court, Salem.

2.N.Selvaraj Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records made in I.D.No.40 of 2007 dated 20.04.2009, on the file of the Labour Court, Salem and quash the same.

For Petitioner : Ms.S.Vijaya

For Respondents : Mr.K.V.Shanmuganathan for R2

O R D E R

Heard Ms.S.Vijaya, learned counsel for the petitioner and Mr.K.V.Shanmuganathan, learned counsel appearing for the second respondent.

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

"To issue a Writ of Certiorari, to call for the records made in I.D.No.40 of 2007 dated 20.04.2009, on the file of the Labour Court, Salem and quash the same.
"

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

The Transport Corporation is the petitioner before this Court. The second respondent was employed as Driver in the petitioner Corporation. On 27.09.2005, the second respondent employee while driving the Corporation Bus, had involved in the accident, in which, seven passengers died and other 30 passengers were injured. According to the Corporation, the accident occurred entirely due to the negligence and the rash driving of the employee.

4. In the above said circumstances, the Management issued a charge memo dated 08.10.2005, to the second respondent workman and his reply to the charge memo was not to the satisfaction of the Corporation. Therefore, an enquiry was conducted and on the conclusion of the enquiry, it was found the charges proved against the employee. Thereafter, the second show cause notice was issued on 13.03.2006. On obtaining explanation from the second respondent employee, the petitioner Corporation vide its order dated 26.04.2006, dismissed the second respondent employee from service.

5. As against the dismissal order, the employee raised an industrial dispute in I.D.No.40 of 2007. The matter was taken up for adjudication by the first respondent - Labour Court. After advertng to the materials placed before the Labour Court, the Labour Court passed an award on 20.04.2009, ordering reinstatement of the second respondent with continuity of service and 50% back wages. The said award of the first respondent - Labour Court is put to challenge in the present writ petition.

6. The learned counsel for the Corporation would submit that the first respondent - Labour Court has found the imposition of penalty of dismissal from service was disproportionate and was also solely guided by the fact that the employee was acquitted by the Criminal Court. In fact, the Labour Court did not discuss anything about clinching evidence available in the departmental enquiry. There was no discussion on the evidence which was made available in the departmental enquiry, which ultimately proved the charges framed against the employee. Unfortunately, the Labour Court without much discussion, has straight away allowed the industrial dispute and ordered reinstatement with continuity of service and 50% back wages.

7. The learned counsel for the Corporation would also submit that the conclusion by the Labour Court that there was no rash and negligent driving on the part of the employee, was without any legal or factual basis and such conclusion was arrived at on the basis of surmise on the part of the Labour Court. Therefore, the findings of the Labour Court in favour of the employee was

nothing but perverse and therefore, the award of the Labour Court liable to be interfered with.

8. On the other hand, learned counsel for the second respondent would submit that the employee had attained the age of superannuation on 04.05.2016 and he would submit that the petitioner is willing to fore go 50% of the back wages awarded by the first respondent - Labour Court.

9. This Court has considered the submissions of the learned counsels on either side. But, as rightly contended by the learned counsel for the petitioner that the entire award was passed without much discussion of the evidence which formed the basis of the enquiry findings. There was also no finding by the Labour Court about the fairness of the departmental enquiry conducted against the employee. Without any kind of discussion, the Labour Court on its own, came to the conclusion that there was no rash and negligent act on the part of the employee. Such finding is completely unsupported by any evidence. As rightly contended by the learned counsel for the petitioner that not an iota of discussion by the Labour Court about the evidence made available in the departmental enquiry.

10. Therefore, in the said circumstances, the findings of the Labour Court has to be held as invalid and perverse and legally unacceptable. In the said circumstances, this Court has no other option except to remit the matter back to the first respondent Labour Court for fresh consideration of the dispute between the petitioner Corporation and the second respondent employee. The first respondent - Labour Court is directed to evaluate the evidence which was made available during the domestic enquiry and come to a definite conclusion whether the employee was given fair opportunity to participate in the enquiry and whether the findings of the domestic enquiry was based on the legally acceptable evidence. If the Labour Court comes to the conclusion that the enquiry was not fair and proper and the charges were not proved in the domestic enquiry, it may proceed to allow the party to lead fresh evidence in support of the respective case of the employee as well as the Management and pass a considered award.

11. The first respondent - Labour Court is directed to complete the proceedings within a period of six months from the date when the matter is restored to its file. It is made clear that in the interregnum, the second respondent employee is not entitled to any monetary benefits. In the said circumstances, the award of the Labour Court passed in I.D.No.40 of 2007 dated 20.04.2009, is set aside and the matter is remitted back to the Labour Court for passing a fresh award in terms of the above direction. It is also made clear that the Labour Court is not to

be influenced by any observation made by this Court.

12. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

gsk

To

1.The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.K.V.Shanmuganathan, Advocate SR.No.13116

+1cc to Mr.T.Chandrasekaran, Advocate SR.No.13288

W.P.No.25826 of 2010

GN(20/03/2018)



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