



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.03.2018
DELIVERED ON : 04.06.2018

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) .No.21330 of 2014 and
W.P. (MD) No.4268 of 2015 and
M.P. (MD) Nos.1 of 2014 and 1 & 1 of 2015

W.P. (MD) No.21330 of 2014

The General Manager,
Tamil Nadu State Transport Corporation,
Thirumayam Road,
Pudukkottai. ... Petitioner

Vs.

1. A.Stalin ... 1st Respondent

2. The Presiding Officer,
Labour Court,
Thiruchirappalli. ... 2nd Respondent

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent herein, dated 23.04.2013 in I.D.No.40 of 2003 and to quash the same.

W.P. (MD) No.4268 of 2015

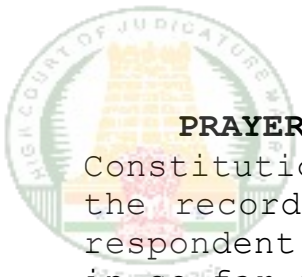
A.Stalin ... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Thiruchirappalli.

2. The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division IV) Ltd.,
Thirumayam Road,
Pudukkottai.

... Respondents



PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the first respondent in I.D.No.40 of 2003, dated 23.04.2013, quash the same in so far as refusing to award back wages is concerned.

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(in all petitions)

For Petitioner : Mr.D.Sivaraman,
in W.P.(MD)No.21330 of 2014
Mr.R.Subramanian,
in W.P.(MD)No.4268 of 2015

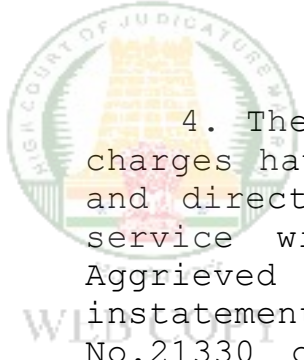
For Respondents : Mr.R.Subramanian
in W.P.(MD)No.21330 of 2014
for R-1
Mr.D.Sivaraman,
in W.P.(MD)No.4268 of 2015
for R-2

C O M M O N O R D E R

The Management of Tamil Nadu State Transport Corporation, Kumbakonam Division, is the petitioner in W.P.(MD)No.21330 of 2014.

2. Stalin, a driver employed in the said Corporation is the petitioner in W.P.(MD)No.4268 of 2015. The said Stalin was appointed as a driver in the year 1980 in the Transport Corporation. When he was on duty on 21.12.2001 from Arandhangi to Thiruchirappalli, the bus which he was driving got involved in an accident with a private car. All the five persons who were passengers in the car died. Therefore, Charge memo dated 22.01.2002 was issued against the said Stalin by the Management. The charge was that the said Stalin had operated the bus in a rash and negligent manner. The enquiry officer submitted his report, dated 29.04.2002 holding that the charges were proved. Thereafter, show cause notice was issued on 08.07.2002 proposing dismissal from service. Final order was passed on 01.08.2002 whereby, the said Stalin was removed from service.

3. The dismissed driver raised an industrial dispute in I.D. No.40 of 2003 before the Labour Court, Thiruchirappalli. The Labour Court, Thiruchirappalli, held that the domestic enquiry was not properly conducted. Therefore, the Management was allowed to lead evidence before the Labour Court to prove the charges levelled against the said Stalin. The Branch Manager was examined as M.W.1 and Exhibits M.1 to M.12 were marked on the side of the Management. The worker examined himself as W.W.1 and exhibits W.1 to W.9 were marked.



4. The Labour Court, by award dated 23.04.2013, held that the charges have not been proved. It set aside the order of dismissal and directed the Management to re-instate the said Stalin into service with continuity of service. It declined backwages. Aggrieved by the award of the Tribunal, directing the re-instatement of the said Stalin, the Management filed W.P.(MD) No.21330 of 2014. Aggrieved by the denial of backwages, the workmen/driver filed W.P.(MD)No.4268 of 2015.

5. Heard the learned counsel on either side.

6. It is admitted that the bus driven by Thiru.Stalin on 21.12.2001 got involved in an accident with a private car and five persons travelling in the car died. The Management charged the bus driver with having driven the bus in a rash and negligent manner. This charge has been vehemently denied by the driver. The Labour Court had held that the domestic enquiry was not fairly conducted.

7. Therefore, this Court will have to see, if sufficient materials were placed before the Labour Court to sustain the charge. It is seen from the evidence on record that the car was dragged to more than 21 feet from the place of accident. More than anything else, there were no tyre marks at the place of the accident. This has not been challenged by the driver in evidence. It clearly proves that Thiru.Stalin did not apply the brake even after seeing that a car was coming in the opposite direction. It is no doubt true that the driver of the private car was primarily responsible for the occurrence. But then, the charge is not whether the petitioner was responsible for the accident. The charge against the petitioner was that he had operated the bus in a rash and negligent manner. No doubt, the driver of the private car in question had taken a wrong overtaking and come on the side in which the Transport Corporation bus was proceeding. It is seen that the accident had taken place at 15.20 hours. If Thiru.Stalin had applied the brake, certainly the magnitude of the impact could have been considerably reduced. It appears that Thiru.Stalin did not apply the brake and as a result, there was a head-on collision. Since the speed of the bus was not reduced, that is why the impact was so hard. The car had been dragged on for quite a distance. Probably, that is why all the five passengers in the car died. These facts have been submitted by M.W.1 who prepared the sketch after inspecting the spot. His evidence has not been shaken.

8. The learned counsel appearing for the driver would contend that Thiru. Stalin was acquitted by the criminal Court. That the criminal Court as well as the Claims Tribunal had found that Thiru.Stalin was not responsible for the accident, will not by itself establish the conclusion that the charges against him has not been established.

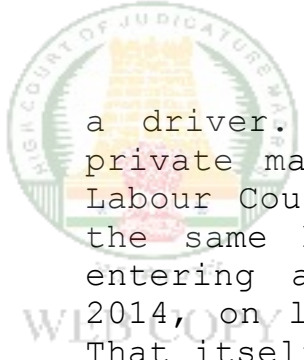


9. This Court holds that the Tribunal has not carefully analysed the findings on record. There are some internal contradictions in the reasoning of the Labour Court. At one place, the Tribunal would observe that on the basis of the evidence available before the Labour Court, the driver could have avoided the accident by taking some more precautions. In another place, the observation of the Labour Court is that "*the punishment is shockingly disproportionate to the alleged misconduct which is also not proved*". If the misconduct has not been proved, the only conclusion can be that the delinquent should be exonerated. Proportionality will come into play only if the misconduct has been established.

10. Therefore, this Court is of the view that the Labour Court has not been entirely consistent in its reasoning. From the material on record, this Court is able to come to the conclusion that even though Thiru.Stalin cannot be said to be responsible for having caused the accident, it has been convincingly established that he had operated the bus in a rash and negligent manner. As already pointed out, the said Stalin did not apply the brake, when the car was coming in the opposite direction. The accident took place in the afternoon and not during night hours. The car was dragged to quite some distance from the collision point. There were no tyre marks which shows that the brake was not applied.

11. In this view of the matter, this Court holds that the charge in question has been proved. The award of the Labour Court stands set aside because it has given completely exonerated the delinquent. But it does not mean that the order of dismissal will hold good. As already pointed out that the delinquent cannot be said to be responsible for the accident. The accident occurred only because the car driver came on the wrong side. The only fault of the petitioner was that he did not apply the brake. If he had applied the brake certainly, the impact of collision would have been mitigated. Therefore, imposing the punishment of dismissal would be grossly disproportionate. The order of dismissal will have to be necessarily set aside. This Court is inclined to set aside the order of dismissal for more reasons than one. Even in the preliminary enquiry conducted by the Management, it has been categorically found that it was the car driver who was primarily responsible. As contended by the learned counsel appearing for the driver, the decision of the criminal Court as well as the Claims Tribunal are in his favour.

12. Taking into account the totality of circumstances, the interest of justice would be served by sustaining the order of the Labour Court in so far as the relief portion is concerned. The Labour Court had set aside the order of dismissal. It directed re-instatement of the said Stalin with continuity of service and back wages. The Labour Court has come to a specific finding that it was not in a position to accept that Stalin was not in gainful employment during the period of non-employment. Stalin is



a driver. A driver always has enough employment scope in the private market. It is also to be noted that the award of the Labour Court was passed on 23.04.2013. The Management challenged the same by filing the Writ petition in the year 2014. After entering appearance through his counsel in W.P.(MD)No.21330 of 2014, on legal advice, W.P.(MD)No.4268 of 2014 came to be filed. That itself would show that Thiru.Stalin was satisfied with regard to denial of backwages.

13. W.P.(MD)No.21330 of 2014 is allowed only for formal purposes. The relief granted to the delinquent in terms of the impugned award are sustained. W.P.(MD)No.4268 of 2015 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Thiruchirappalli.

+ 1 cc TO Mr.R.Subramanian , Advocate in SR No. 66671
+ 1 cc TO Mr.D.Sivaraman , Advocate in SR No. 66588

pmu

AE/SV MMS/SAR1/17.06.2018/5P/4C

ORDER
MADE IN

W.P.(MD).No.21330 of 2014 and
W.P.(MD)No.4268 of 2015 and
M.P.(MD)Nos.1 of 2014 and 1 & 1 of 2015
04.06.2018