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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation : 27.03.2018

Date of Pronouncement : 26.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4974 of 2015

S.Babu Peter

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Trichy.

2.The Management of
Tamilnadu State Transport
Corporation (Kumbakonam) Ltd,
Trichy Region, Rep.by its General Manager,
Trichy.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records from the first respondent Labour Court relating to the impugned award dated 08.08.2012 passed by the first respondent in I.D.No.61/1998, quash the same and consequently to direct the second respondent to reinstate the petitioner in service with back wages and continuity of service and all other attendant benefits and award cost.

For Petitioner	: Mr.S.Arunachalm
For Respondents	: Mr.D.Sivaraman for R2
	R1 - Labour Court

ORDER

The petitioner Thiru.S.Babu Peter was appointed as a Driver in the Tamil Nadu Transport Corporation (Kumbakonam) Limited on 30.01.1991. On 11.10.1993, the vehicle that was driven by the petitioner was involved in an accident and a child died. In this regard, disciplinary action was taken against the writ petitioner and he was found guilty of negligence. The enquiry officer also gave a finding that the deceased child had contributed to the occurrence. Be that as it may, the disciplinary authority took the view that the writ petitioner was guilty of serious misconduct and that the charges framed against him stood proved. After following the usual formalities, the petitioner was dismissed from service by order dated 27.09.1994.



2. Aggrieved by the same, he raised an industrial dispute in ID No.61 of 1998 on the file of the Labour Court, Trichirappalli. The Labour Court came to the conclusion that the domestic enquiry was fairly conducted and that the charges were proved. However, it came to the conclusion that the punishment of dismissal imposed on the petitioner was grossly disproportionate. It therefore directed the reinstatement of the petitioner with continuity of service, but without backwages and other attendant benefits. The Labour Court had also substituted the punishment by imposition of increment cut for three years with cumulative effect. This was on 01.11.1999. This award of the Labour Court was questioned by the management by filing WP(MD)No.10088 of 2000. In order to avoid payment of the last drawn salary, the petitioner herein was reinstated in service with effect from 01.11.2000 and the writ petition was allowed on 30.10.2009 in the following terms.

"The Labour Court though substituted the punishment imposed by the management, failed to indicate reasons much less justifiable reasons in support of such modification. Therefore, I am of the view that the award of the Labour Court is liable to be set aside in respect of the modification of punishment. The matter is remitted to the Labour Court for fresh consideration to decide the third issue as to whether the punishment imposed by the management was disproportionate to the charges levelled against the second respondent in the light of the legal position indicated above."

3. Following the disposal of the writ petition, the writ petitioner herein was disengaged from service with effect from 27.12.2009. After the remand, the Labour Court came to the conclusion that the punishment of dismissal imposed on the petitioner was quite commensurate with the gravity of charges. In Page No.8, the following observations have been made by the Labour Court, Trichy.

"On perusal of the records, it revealed that when the boy dashed on the standing vehicle and fell in between the wheels and when the petitioner heard the sound of the public to stop the vehicle, in order to escape from the crowd, it appeared that the petitioner had driven the vehicle immediately to the police station than to stop there itself which resulted to the death of boy and so, the petitioner is guilty of negligence which resulted in the death of a school going child. On hearing the sound of public, if the petitioner had stopped the vehicle and got down, the death of boy could have been averted. Failure to do so, and driven the vehicle to police station, resulted in accident. This act proved that the petitioner is



guilty of negligence. The Criminal Court and enquiry officer came to conclusion that the petitioner was not guilty of rash driving alone. The Criminal Court judgment was delivered only after dismissal of petitioner. The Criminal Court judgment will have a bearing on a decision of an enquiry. But in this case, death did not occur immediately on the falling between the wheels but because of driving of vehicle, on hearing the sound of public about the falling of boy between wheels which proved his negligence."

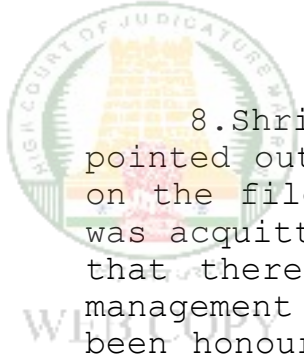
In that view of the matter, the Labour Court dismissed ID No.61 of 1998 by the award dated 08.08.2012. Assailing the same, this writ petition has been filed.

4.Shri.Ajoy Khose, the learned counsel for the petitioner pointed out that the Labour Court had proceeded on the erroneous premise that when the enquiry officer's finding was accepted and the fairness of the enquiry was not disputed and the management decided to impose such a punishment, the order of dismissal passed by the management against the petitioner is valid.

5.This Court is fully in agreement with the said submission of the learned counsel for the petitioner. It appears that the Labour Court has virtually forgotten the existence of Section 11 A of the Industrial Disputes Act, 1947. But, as rightly pointed out by the learned Standing Counsel for the management, the Paragraph at Page No.9 should not be read in isolation. The award will have to be read as a whole.

6.This Court is of the view that the Labour Court had kept the principle of proportionality enshrined in Section 11 A of the I.D Act, 1947 in mind and decided not to grant any relief to the petitioner herein. This Court is clearly of the view that even though valid submissions have been made on the side of the petitioner, the petitioner had virtually missed the bus immediately or atleast after 13.10.2009. In fact, this Court is of the view that the petitioner should have argued by invoking Order 41 Rule 33 of CPC and put forth his case questioning the findings of the Labour Court award insofar as they were against him. Atleast, he should have asked for retention in service till the I.D. Proceedings are over. WP No.10088 of 2000 was allowed in favour of the management and a limited order of remand was passed.

7.In this case, this Court while allowing the writ petition filed by the management had passed only a limited order of remand. Therefore, the scope of the present writ petition is extremely limited. This Court is of the view that no interference can be made with the award passed by the Labour Court. But, the matter cannot rest there.



8. Shri. Ajoy Khose, the learned counsel for the petitioner pointed out that the delinquent was prosecuted in CC No.545 of 1994 on the file of the learned Judicial Magistrate No.1, Trichy and he was acquitted by Judgment dated 02.07.1996. He was also pointed out that there is a clause in the settlement arrived at between the management and the workers to the effect that if the delinquent has been honourably acquitted by the criminal court notwithstanding the punishment suffered by him earlier, the management will have to revisit the issue. But then, the question is whether the judgment of acquittal dated 02.07.1996 is a honourable one or otherwise given on technical grounds.

9. This Court is of the view that it is the management that should take a call in the matter. The petitioner is directed to submit a representation within one week from the date of receipt of a copy of this order. If such representation is made by the petitioner herein, the management shall revisit the issue in the light of the clause 61 in the minutes in the settlement dated 30.09.92. It is open to the management to take into account the fact that the petitioner had served for a full 9 years after the order of dismissal was passed and that during the said period, the petitioner did not cause any accident. This mitigating circumstance can very well be taken into account by the management. It is needless to mention that the management shall take an independent decision in the matter totally uninfluenced by the award that has been now affirmed by this Court. The management shall pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner. Accordingly, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-III)

To
The Presiding Officer,
Labour Court, Trichy.

+1CC to Mr.C.Arunachalam, Advocate in SR.No.75504.
+1cC to Mr.D.Sivaraman, Advocate in SR.No.75495.

SKM

DS/RSK/SAR-3 ;24.08.2018: 4P/4C

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26.07.2018