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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18652 of 2016
and
WMP(MD)No.13497 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division 2) Limited,
Periyamilaguparai,
Tiruchirappalli. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirappalli.

2.T.John Britto ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the award passed by the first respondent herein dated 13.12.2012 in ID No.73 of 2002 and quash the same.

For Petitioner : Mr.D.Sivaraman

For Respondents : R1 – Labour Court

No appearance for R2

ORDER

Heard the learned counsel for the petitioner. There is no representation on the side of the second respondent.

2.The petitioner is a public transport corporation. The second respondent was working as a Driver in the petitioner corporation. He was terminated from service by order dated 21.07.2001. Challenging the same, the second respondent filed ID No.73 of 2002 on the file of the Labour Court, Trichirappalli. By award dated 13.12.2012, the Labour Court set aside the order of dismissal passed by the employer and directed payment of 25% of backwages from the date of dismissal till the date of his

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superannuation. The management was also directed to give continuity of service and retirement benefits in accordance with law. Challenging the same, this writ petition has been filed.

3.The second respondent herein was driving the bus on 19.11.2000 from Chennai to Trichy. At about 03.45 P.M, near Veppur, the bus driven by the second respondent herein got involved in an accident with a private omni bus coming in the opposite direction. Eight passengers suffered injuries. There was also a damage to the corporation bus to the tune of Rs.25,600/-. The second respondent was placed under suspension and charge memo dated 02.12.2000 was issued. Enquiry was conducted. The enquiry officer submitted a report on 12.04.2001 holding that the charges against the second respondent stood proved. After serving a copy of the report on the second respondent and getting his explanation, the management dismissed the second respondent from service by order dated 21.07.2001.

4.The Labour Court took the view that the procedure followed in the domestic enquiry was not fair. Therefore, the management was given an opportunity to adduce evidence. Availing the opportunity, the management examined two witnesses and marked Exs.M1 to M13. On the side of the second respondent herein Exs.W1 to W11 were marked. The second respondent also examined himself as a witness. The Labour Court came to the conclusion that the charge framed against the second respondent herein in the departmental proceedings is not having any factual basis. In that view of the matter, the order of dismissal came to be set aside.

5.This Court went through the evidence on record. Ex.M1 is the detailed accident report. Ex.M2 is the sketch. Exs.M3, M4 and M5 are the damage report, M.A report and basic report respectively. In this regard, Crime No.351 of 2000 was registered against the second respondent herein. It is not in doubt that the second respondent was driving the 10 A.M trip bus of the petitioner corporation from Chennai to Trichy.

6.It is again not in dispute that the Omni bus was coming from the opposite direction. The corporation bus had suffered damage on the left side near the foot board. Thus, it is clear if the private omni bus coming from the opposite direction was to dash against the left side of the petitioner corporation bus, it can only mean that the second respondent would have swerved the bus. The charge is to the effect that the accident had occurred because the second respondent herein had driven the bus in a rash and negligent manner and attempted to over take the bus going in front. Even as the second respondent took a risky over taking he saw that the private bus was coming from the opposite direction. Therefore, he had swerved the corporation bus to the extreme right side and in this process, the accident had

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occurred.

7.These facts are self evident. A mere look at the Exs.M1, M2 and M3 would point to this conclusion. This is a case in which the maxim *res ipse loquitor* can be applied. The Labour Court had chosen to hold that the charge memo has been issued without application of mind. The findings of the Labour Court are perverse and hence warrant intervention at the hands of this court in exercise of its jurisdiction under Article 226 of the Constitution of India. The fact that MW1 and MW2 who were examined before the Labour Court were not witnesses to the occurrence cannot make any difference.

8.In this case, the event can be easily reconstructed based on the sketch and damage report. The error committed by the Labour Court was to consider Ex.M5 basic report alone and undermine the charge memo on that basis. It is not the case of the second respondent that no accident had taken place. The accident in question had indeed taken place. Hence, based on Exs.M1 to M4, it is possible to reconstruct the entire consequence of events. It would clearly probablise the version of the management that the accident took place only on account of the rash and negligent overtaking done by the second respondent without even bothering to note if any vehicle was coming from the opposite direction.

9.This Court therefore comes to the conclusion that the Labour Court erred in interfering with the punishment of dismissal imposed by the management. In the present case, one cannot lose sight of the fact that the second respondent has suffered as many as 34 punishments in his career. Out of 34, 10 punishments were imposed for causing accidents. Out of 10, 4 accidents were fatal in nature. In all the previous occasions, lenient view was taken in favour of the second respondent and only minor punishments were imposed on him. But, it appears that the second respondent proved to be incorrigible. Continuing a person like the second respondent as a Driver would have gravely endangered the lives of the travelling public. Therefore, this Court is of the view that the Labour Court erred in passing the impugned award. The impugned award is set aside. This writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

Skm

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To

The Presiding Officer,
Labour Court,
Tiruchirappalli.

+1 CC TO Mr. D.Sivaram , Advocate, Sr.No. 54451

JAM/29/05/2018/ SKN-RSK/SAR 2/ 4p-3c

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