

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.16426 of 2011

P.Gajendran

... Petitioner

Vs

1. The Presiding Officer,
II Additional Labour Court, Chennai.

2. The Management of Metropolitan
Transport Corporation
(Division-I) Ltd., Chennai - 2. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to calling for the records pertaining to the award dated 25.08.2010 passed by the 1st respondent in I.D.No.940 of 2001, quash the same and consequently direct the 2nd respondent to reinstate the petitioner with continuity of service, backwages and all other attendant benefits, award costs.

For Petitioner : Mr.R.Krishnaswamy
For Respondents : Ms.Rajeni Ramadoss for R2
R1 : Court

O R D E R

Heard. Mr.R.Krishnaswamy, learned counsel for the petitioner and Mr.Rajeni Ramadoss, 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 pertaining to the award dated 25.08.2010 passed by the 1st respondent in I.D.No.940 of 2001, quash the same and consequently direct the 2nd respondent to reinstate the petitioner with continuity of service, backwages and all other attendant benefits, award costs."

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

The petitioner herein was working as a driver in the second respondent Corporation at Adyar Depot. While driving the bus in Route No.23C which was plying between Besant Nagar and Ayanavaram, on 27.01.2000, an accident had occurred, in which, one person died and some of the passengers including the petitioner himself had suffered injuries. Subsequent to the accident, the petitioner was placed under suspension. Thereafter, a charge memo was issued on 18.02.2000 charging the petitioner for carelessness and negligent driving on 27.01.2000 and also for caused revenue loss to the corporation and causing damage to the reputation of the corporation among the public. The detailed explanation was submitted by the petitioner on 03.02.2000 by denying the charges and also explained as to how the accident took place. According to the petitioner, he was no way responsible for the accident and requested the corporation to drop the enquiry proceedings.

4.In the above said circumstances, the Management issued a charge memo dated 18.02.2000, to the petitioner / driver, as reply to the charge memo was not to the satisfaction of the Corporation, an enquiry was conducted and on the conclusion of the enquiry, the Enquiry Officer submitted his report on 01.06.2000, it was found that the charges were proved against the petitioner. The Corporation accepted the findings of the Enquiry Officer and ultimately an order of dismissal was passed on him by order dated 01.08.2000.

5.As against the dismissal order, an appeal was preferred on 14.09.2000 to the Managing Director and the same was also rejected on 20.01.2001. In the said circumstances, an Industrial Dispute was raised in I.D.No.940 of 2001. The first respondent / Labour Court after adverting to the materials placed before it, had dismissed the claim of the petitioner for the reasons as under.

(a) The Petitioner was only a daily wage earner and had not established that he had worked for more than 240 days continuously.

(b) The Petitioner had accepted the factum of the accident on 27.01.2000 and therefore, the charge against him stood established and hence, the punishment was rightly imposed.

(c) The enquiry which was conducted against the petitioner was fair and proper, since proper opportunities were afforded to the petitioner.

(d) The evidence as given by the petitioner himself in the proceedings before the Labour Court appeared to be false and therefore, the

Industrial Dispute raised by him was not to be entertained.

For the above said reasons, the Industrial Dispute raised by the petitioner came to be dismissed. As against that, the present writ petition has been filed.

6.Mr.R.Krishnaswamy, the learned counsel appearing for the petitioner would submit that the first respondent / Labour Court has completely abdicated the statutory responsibility vested in it under Section 11(A) of the Industrial Dispute Act. The first respondent / Labour Court has not gone into the evidence as made available in the Domestic Enquiry, in view of the facts that the first respondent / Labour Court itself has held that the enquiry was fair and proper. No detailed reasons were given by the first respondent / Labour Court, in support of its conclusion that the Domestic Enquiry which was fair and proper. The learned counsel further submits that once the Domestic Enquiry was held fair and proper, the first respondent / Labour Court not to have relied on the evidence let in before it and ought to have relied on the evidence which was available only in the Domestic Enquiry. He would submit that the conclusion has reached by the first respondent / Labour Court was not supported by any materials or any worthwhile reasons.

7.The learned counsel would also submit that the first respondent / Labour Court has mis-directed itself by concluding that the petitioner was only a daily wage labourer and had not completed 240 days continuously in the year. The first respondent / Labour Court had wrongly framed the issue of whether the petitioner had completed 240 days or not, such issue was not germane to the dispute as raised by the petitioner herein. The issue before the first respondent / Labour Court was whether the accident was caused by the petitioner due to his negligence or due to Mechanical Defect and whether the charges which were framed against the petitioner stood established in the domestic enquiry and whether the circumstances of the case, the order dismissing the petitioner from service was proportionate to the gravity of misconduct alleged against him. Unfortunately, the first respondent / Labour Court without dealing with such issues, has merely dealt with non issues like number of days worked by the petitioner and concluded against the petitioner.

8.At this, the learned counsel appearing for the second respondent corporation would submit that the factum of accident was admitted by the petitioner himself, in which several passengers were injured and the corporation had also suffered huge revenue loss in order to compensate the passengers injured and the person died due in the accident. Since, the first respondent / Labour Court was satisfied about the misconduct of

the petitioner, it has rightly dismissed the industrial dispute and the same does not call for interference from this Court.

9.This Court has considered the rival submissions of the learned counsel for the petitioner as well as the learned counsel for the corporation. No doubt, the learned counsel for the corporation has asserted that the petitioner was responsible for causing the accident in which one person died and several passengers were injured. At the same time, the legal objections as raised by the learned counsel for the petitioner cannot be lost sight of. The first respondent / Labour Court after holding that the domestic enquiry was fair and proper, ought to have referred to the evidence as let in the domestic enquiry, instead of relying on the evidence let in before it. The first respondent / Labour Court ought to have also given reasons in detail to come to the conclusion that the domestic enquiry conducted was fair and proper. In this case, the first respondent / Labour Court had merely concluded as such without any supportive materials.

10.Moreover, as rightly contended by the learned counsel for the petitioner that the issue of number of working days worked by the petitioner was not the dispute referred for adjudication, as the scope of adjudication was only confined to whether the charges as framed against the petitioner were established on the basis of acceptable evidence let in, in the domestic enquiry. In this regard, the first respondent / Labour Court has completely misguided itself and traversed in the areas which were not relevant to the issues placed for consideration. Moreover, the first respondent / Labour Court ought to have exercised its discretion conferred on it under Section 11(A) of the Industrial Dispute Act, atleast in regard to the quantum of penalty imposed on the petitioner de hors the fact that the petitioner was a daily wager or a regular employee. In the absence of such findings in the exercise of power under Section 11(A), in the opinion of this Court the award passed by the Labour Court is liable to be interfered with.

11.This Court is conscious of the fact that the dispute is of the year 2001 and the award is of the year 2010 and thereafter, several years were lapsed. At the same time, this Court cannot adjudicate the factual dispute raised in present writ petition, while exercising the jurisdiction under Article 226 of the Constitution of India. In the said circumstances, this Court has no hesitation to set aside the award passed by the first respondent and the matter is to be remitted back to the first respondent Labour Court for fresh consideration.

12.For the above said reasons, the impugned award in I.D.No.940 of 2001 dated 25.08.2010 is hereby set aside and the matter is remitted back to the first respondent / Labour Court

for giving a detailed finding in regard to the domestic enquiry conducted against the petitioner on the basis of the materials placed for consideration before the Enquiry Officer. The Labour Court is directed to give a detailed finding as to the evidence that was let in before the domestic enquiry was sufficient enough to establish the charges against the petitioner and thereafter to come to the conclusion in regard to the findings of the enquiry conducted against the petitioner.

13. In case the Labour Court finds that the enquiry conducted by the corporation was not fair and proper in dealing with the charges, the 1st respondent is directed to afford an opportunity to the parties to lead fresh evidence in support of their respective claims and also directed to consider the quantum of penalty to be imposed on the petitioner.

14. In view of the long pendency of the dispute before the Labour Court and before this Court, the first respondent / Labour Court is directed to pass fresh award within a period of twelve weeks from the date of receipt of a copy of this order. The Registry is directed to forward the records to the Labour Court as expeditiously as possible.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Presiding Officer,
II Additional Labour Court, Chennai.

2. The Management of Metropolitan
Transport Corporation
(Division-I) Ltd., Chennai - 2.

+1 CC to Mr. V. Ajay Khose, Advocate sr 12745.

W.P.No.16426 of 2011

SR(CO)
SP(29/3/2019)