

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 22.04.2019

Delivered on : 29.04.2019

CORAM:

THE HON'BLE MR. **JUSTICE SETHILKUMAR RAMAMOORTHY**

W.P.No.12333 of 2006
and
M.P.Nos.13929 and 16516 of 2006

The Tamil Nadu State Transport Corporation
(Salem) Ltd.,
Rep. by its Managing Director,
Salem. ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.S.Sironmani ... Respondents

सत्यमेव जयते

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the First Respondent in I.D.No.445 of 2004 dated 05.04.2005 and quash the same.

For Petitioner : Mrs.Rajeni Ramadoss

For Respondents : Mr.J.Muthukumarasan for R-2

ORDER

This Writ Petition is filed for a Writ of Certiorari to quash the order dated 05.04.2005 of the First Respondent in I.D. No. 445 of 2004.

2.The case of the Petitioner is that the Second Respondent was appointed as a daily paid driver in the Petitioner Corporation on 23.06.1988 and that his services were regularised with effect from 01.08.1989. On 11.3.1993, the Second Respondent was on duty in vehicle number TN 29/N0024 on the Krishnagiri-Vellichandai route. En route, the bus had stopped at the Kaveripattinam Bus Stand in order to enable passengers to board or de-board the bus. At about 6.45 p.m., the Second Respondent started the bus and almost immediately ran over a lady pedestrian who died on the spot. An enquiry was initiated against the Second Respondent for rash and negligent driving by issuing charge sheet dated 23.03.1993. Because the explanation dated 30.03.1993 of the Second Respondent was not satisfactory, a domestic enquiry was conducted. The Second Respondent participated in the said enquiry and, upon conclusion thereof, the Enquiry Officer held that the charges against the Second Respondent were proved. By taking into consideration the enquiry report, a second show cause notice was issued by the Petitioner on 5.11.1993 proposing the punishment of

dismissal from service. In view of the fact that the explanation of the Second Respondent to the said notice was not satisfactory, he was dismissed from service as per order dated 06.10.1994 by also taking into account the previous accidents that he was involved in.

3.The Second Respondent initiated an industrial dispute before the First Respondent under Section 2A(2) of the Industrial Disputes Act, 1947 (the ID Act) by Claim Petition dated 16.04.2004, upon failure of conciliation proceedings that were initiated on 29.01.2004, and by order dated 05.04.2005, the First Respondent held that the Second Respondent was not solely responsible for the accident and, therefore, set aside the order of dismissal and directed reinstatement of the Second Respondent with continuity of service and other benefits but without back wages. The said order dated 05.04.2005 is the Impugned Order in this Writ Petition. An interim stay of the Impugned Order was granted at the time of admission on 27.04.2006.

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4.At the hearing, the learned counsel for the Petitioner referred to the Impugned Order of the First Respondent, at paragraph 6, and submitted that the First Respondent concluded that the validity of the domestic enquiry proceedings were not under challenge and that the matter is confined to deciding the quantum

of punishment. The learned counsel, thereafter, referred to the finding of the First Respondent, at paragraph 12, that misconduct was partly proved. She further submitted that the industrial dispute was raised about 10 years after the dismissal of the Second Respondent from service. In spite of that, she submitted that the First Respondent held that the Second Respondent's case cannot be rejected merely on the ground of delay. The learned counsel for the Petitioner also referred to and relied upon a Division Bench judgment of the Punjab and Haryana High Court in **AJAIB SINGH Vs. SIRHIND COOPERATIVE MARKETING-CUM-PROCESSING SERVICE SOCIETY LIMITED** in **1999 (1) CLR 1194**, wherein, it was held at paragraph 8 that even if it is assumed that the residuary clause contained in Article 137 of the Limitation Act is not strictly applicable to proceedings under the ID Act, it cannot be said that a workman is entitled to raise a dispute at any time. If there is delay, it should be explained and, if the explanation is not satisfactory, it would be a sound exercise of discretion to deny relief to the workman if the delay is more than the maximum period of limitation prescribed under the residuary clause. On the basis of the said judgment, the learned counsel for the Petitioner contended that the industrial dispute raised by the Second Respondent herein was liable to be dismissed on account of laches.

5.The learned counsel further submitted that the Second Respondent was involved in multiple accidents over the short tenure of six years. In specific, the learned counsel pointed out as to how the Second Respondent was involved in five accidents, including two fatal accidents, excluding the accident that is subject matter of the dispute. In this regard, the learned counsel further submitted that the dismissal order had cited several instances of the past misconduct of the Second Respondent but that the First Respondent held that past misconduct cannot be a ground to judge the present misconduct. In conclusion, the learned counsel referred to paragraph 11 of the Impugned Order wherein the First Respondent recorded that the Petitioner was not fully responsible for the accident but he should have driven the vehicle carefully even though the pedestrian was on the wrong side.

6.In response, the learned counsel for the Second Respondent submitted that the accident had occurred because the deceased pedestrian was mentally disabled and could not be seen by the Second Respondent when he started the bus at the bus stand. In effect, he submitted that the death did not occur due to rash and negligent driving and that, therefore, the decision of the First Respondent to reinstate the Second Respondent without back wages was not vitiated by any infirmity. In order to substantiate his submissions, he relied upon the Division Bench judgment of this

court in **M.KANNAN Vs. THE MANAGEMENT OF FAL INDUSTRIES in WRIT APPEAL No.3642 of 2004**, wherein it was held that section 17 B of the Industrial Disputes Act is mandatory and that, therefore, the court is bound to consider a petition under Section 17-B irrespective of the merits of the case. The learned counsel also referred to the Order dated 8.4.2009 of this Court in the **TAMIL NADU STATE TRANSPORT CORPORATION Vs. THE PRESIDING OFFICER, LABOUR COURT AND ANOTHER, in Writ Petition No. 27285 of 2004** wherein this Court held that the principle of *res ipsa loquitur* cannot be applied where evidence is available. The Court further held that the Petitioner therein had not shown sufficient cause or reason to come to the conclusion that the findings of the Labour Court were perverse or based on no evidence. In addition, it was held that if the order of the Labour Court is based on interpretation of the facts of the case, the Court would not interfere with minor discrepancies.

7.The affidavit, documents on record and the oral submissions of both parties were carefully considered.

8.In fact, the original records of the proceedings before the Labour Court were also examined. 12 exhibits were filed before the Labour Court, including the FIR dated 13.03.1993, the statement of the Second Respondent dated 12.03.1993, the statement of the conductor dated 12.03.1993, the Rough Sketch of

the scene of accident, Charge Sheet dated 23.03.1993, the reply of the Second Respondent thereto dated 30.03.1993, the enquiry proceedings, the findings of the Enquiry Officer dated 07.10.1993, the second show cause notice to the Second Respondent dated 05.11.1993, the reply of the Petitioner thereto dated 06.10.1994 and the dismissal order dated 06.10.1994. The dismissal order dated 06.10.1994 refers to the five previous accidents in which the Second Respondent was involved, including the two previous fatal accidents. The record shows that an accident report was filed on 13.03.1993 recording details about the accident. The conductor's statement was also taken and he stated that the driver moved the bus immediately after the passengers had de-boarded or boarded the bus, as the case may be, at the bus stand. Immediately after the bus moved, members of the public shouted and, therefore, the driver stopped the bus. The conductor states that he immediately got off the bus to check the reason for the commotion and found that, on the front right hand side of the bus, a lady had been injured and upon approaching the said lady, it became clear that she was dead. He further states that he immediately gave notice to the nearby police station and to the transport corporation and ensured that the passengers boarded another bus. He further stated that the passengers, driver or conductor were not injured and that the bus was not damaged as a result of the accident.

9.The record further shows that a notice containing the charges was sent to the Second Respondent on 23.3.1993 and that the Second Respondent replied thereto on 30.03.1993. It is further clear that the Second Respondent participated in the enquiry before the Enquiry Officer and was provided an opportunity to cross examine the witnesses for the management. He was further provided an opportunity to examine witnesses on his behalf but chose not to do so. The Enquiry Officer examined the documentary and oral evidence and held that the bus driver started the vehicle without getting out of the bus to check whether any person is in the path of the vehicle and without honking and that this establishes the negligence of the driver. In this connection, it is relevant to state that the deceased pedestrian was in front of the bus on the right/driver side and, therefore, could have been noticed by a reasonably alert driver. In the proceedings before the Labour Court, it was recorded that the Second Respondent herein is not challenging the enquiry proceedings. In effect, the Second Respondent admitted that domestic enquiry proceedings were validly held. Consequently, the enquiry before the Labour Court was admittedly confined to the quantum of punishment.

10.In these facts and circumstances, the question arises as to whether the decision of the Labour Court is liable to be interfered with. The finding of the Labour Court that misconduct is proved

partly is not in consonance with the Enquiry Officer's report and appears to be based on a re-appraisal of evidence after recording that the scope of enquiry before the Labour Court would be confined to the quantum of punishment. The other finding that past misconduct cannot be the basis to judge the present misconduct is also evidently flawed in as much as past misconduct is a relevant factor in deciding whether the quantum of punishment is reasonable or disproportionate. In the instant case, the dismissal order sets out the history of past misconduct and discloses that the Second Respondent was involved in two previous fatal accidents. Even as regards this accident, there is no dispute that the bus was driven by the Second Respondent when the pedestrian was run over. Given the fact that the driver did not get out of the bus, at the bus stand, to check if any persons are in the path of the bus, the fact that the driver, admittedly, did not honk before starting the bus and that the pedestrian was in front of the bus and that too on the right-hand side when the accident occurred, the finding that the driver was rash and negligent is not a perverse finding. Therefore, the Labour Court ought not to have interfered with this finding. On the facts of this case, the quantum of punishment is clearly reasonable especially in light of the past instances of misconduct. It is also undisputed that the Second Respondent approached the Labour Court about ten years after his dismissal and laches is an important

consideration and the Labour Court should not have overlooked this aspect especially when no explanation was offered for the delay. In this regard, the principle laid down by the Division Bench of the Punjab and Haryana High Court in the case reported in **1999 (1) CLR 1194**, which was cited by the learned counsel for the Petitioner, applies to the instant case. In this regard, the Hon'ble Supreme Court in **ASSISTANT ENGINEER, RAJASTHAN STATE AGRI-MARKETING BOARD Vs. MOHAN LAL** in **(2013) 14 SCC 543**, held that the delay and laches are an important consideration in industrial disputes notwithstanding the fact that the Limitation Act, 1963 does not apply and should be taken into account even if the defence is not raised. Consequently, it is clear that the impugned order is riddled with errors apparent on the face of the record.

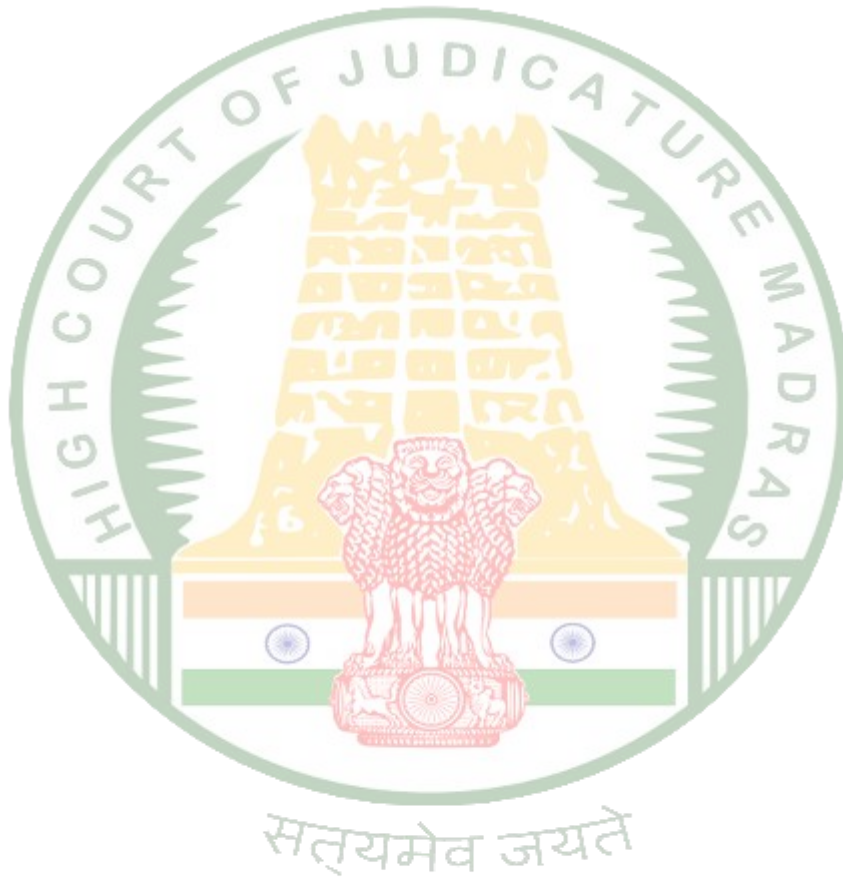
11. For the foregoing reasons, this Writ Petition is allowed by quashing the Impugned Order dated 05.04.2005 in I.D. No.445 of 2004 but there shall be no order as to costs. Consequently, connected M.Ps. are closed.

29.04.2019

Index : Yes/No
 Internet : Yes/No
 Speaking Order/Non speaking order
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To

The Presiding Officer,
Labour Court,
Salem.



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SENTHILKUMAR RAMAMOORTHY, J.,
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**Pre Delivery Order in
W.P.No.12333 of 2006**

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