

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.15180 of 2009

B.Durairaj

.. Petitioner

-vs-

1. The Presiding Officer
II Additional Labour Court
Chennai 600 104

2. The Management of
State Express Transport Corporation Ltd.,
Pallavan Salai
Chennai 600 002 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent relating to the Award dated 21.07.08 passed in I.D.No.356 of 2002, quash the same and consequently direct the second respondent to reinstate the petitioner in service with continuity of service and with back wages and other attendant benefits.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents: Mr.M.Chidambaram
Standing Counsel for R2
R1-Court

ORDER

This writ petition has been directed against the correctness of the impugned award dated 21.7.2008 passed in I.D.No.356 of 2002 by the Second Additional Labour Court, Chennai, confirming the order of dismissal dated 27.9.2001 passed against the petitioner.

2. Learned counsel for the petitioner, assailing the impugned award, stated that the petitioner, having joined the second respondent-Transport Corporation as a Driver on 2.11.87, had put in nearly 14 years of continuous service. While he was

on duty at Pondicherry depot in Route No.300 plying between Chennai and Chidambaram, on 2.12.2000, he took the vehicle bearing No.A342 around 16.30 hours and proceeded towards Chidambaram. While he was carefully driving the said vehicle on the National Highway near Morapakkam Village, at 19.00 hours, four persons travelling on a two-wheeler were proceeding before the bus on the left side. Since the rider of the two-wheeler, without noticing the bus, suddenly turned to the right side to proceed towards Morapakkam Cross Road on the National Highway, the petitioner, noticing the same, applied sudden brake. However, the two-wheeler crossed the road very close to the bus, as a result, the petitioner was unable to avert the accident. Only due to the careless and negligent driving of the two-wheeler rider, the accident had occurred, for which the petitioner cannot be held responsible. The very fact that the two-wheeler was carrying four persons at the time of accident itself would show that only because of the heavy load, the rider of the two-wheeler was unable to control the vehicle. Therefore, the enquiry officer, accepting the case of the petitioner, should have come to the conclusion that the accident had occurred only due to the carelessness of the two-wheeler rider. Leaving that course, wrongly proceeding as if the accident had occurred only due to the rash and negligent driving of the petitioner, he was issued with the charge memo on 22.12.2000 alleging that without following the rules framed under the Motor Vehicles Act, the petitioner allegedly drove the vehicle rashly and negligently and caused the fatal accident of killing two persons on the spot. On receipt of the said explanation, the petitioner also gave his detailed explanation on 29.12.2000 denying all the charges. But the disciplinary authority proceeded with the enquiry by appointing an enquiry officer, who also, after completing the enquiry, gave a perverse finding. It was the claim of the petitioner that when a proper and acceptable explanation was offered by him that only because of the careless driving of the two-wheeler rider carrying four persons, the accident had occurred, this was not even adverted and noticed by the enquiry officer. Finally, accepting the report holding the petitioner guilty of all the charges, the petitioner was also furnished with the copy of the report along with the second show cause notice calling him to submit his written explanation. Accordingly, the petitioner restated his stand taken before the enquiry officer also before the disciplinary authority, who also, overlooking the vital explanation offered by the petitioner, without even giving an opportunity to cross examine anyone and more importantly, without even examining the Conductor who was in the bus at the time of accident, wrongly imposed the punishment of dismissal from service. Hence, the petitioner, questioning the correctness of the order of punishment imposed against him, approached the Labour Court by raising an industrial dispute in

I.D.No.356 of 2002. But the Second Additional Labour Court, Chennai, for the reasons best known, wrongly following the reasons given by the enquiry officer, which were confirmed by the disciplinary authority, without looking into the case of the petitioner that his explanation were completely brushed aside by the enquiry officer and also by the disciplinary authority and the stand taken by the petitioner that he was not given full opportunity to cross examine the important witness, again dismissed the industrial dispute. As against that, the petitioner has come to this Court.

3. Arguing further, it is pleaded that when the petitioner was having 14 years of continuous service as a Driver, only on mere assumption and presumption, the disciplinary authority ought not to have come to the conclusion that in view of the two fatal accidents committed by the petitioner earlier, the third fatal accident also has been committed by the petitioner due to his rash and negligent driving. This assumption and presumption made by the disciplinary authority is wholly unacceptable and impermissible in law. In support of his submissions, he has also referred to a judgment of this Court in Jeeva Transport Corporation Limited v. Industrial Tribunal, Madras and another, 1993-1 L.L.N. 870 for the proposition that the Conductor of the bus or another person who had witnessed the accident is not examined, that would prove fatal to the enquiry. In the present case also, it has been the continuous plea of the petitioner before the enquiry officer and also before the Labour Court that the Conductor of the bus driven by the petitioner was not examined and no good reason was offered either by the disciplinary authority or by the Labour Court as to why the evidence of the Conductor who was also travelling in the same bus which allegedly met with an accident, has not been examined. Therefore, the findings recorded in the domestic enquiry are to be held as perverse. Adding further, he has stated that the petitioner, during the pendency of the writ petition, reaching the age of superannuation, retired from service. Although the question of reinstatement does not arise, while setting aside the punishment imposed which is disproportionate to the charges, a direction be issued to pay the petitioner's retiral benefits.

4. The learned counsel for the second respondent, relying upon the counter affidavit filed before the Second Additional Labour Court, argued that it is too late on the part of the petitioner to plead that it was only due to the fault of the two-wheeler rider the fatal accident took place, since the report filed by the Motor Vehicle Inspector clearly proved the case of both the petitioner and the second respondent. As per the accident report, it was proved beyond all reasonable doubt that the accident made by the petitioner on 2.12.2000 in Route No.300 is due to the sheer negligence and rash driving of the

petitioner. When the petitioner was not even able to disprove the accident report and when the petitioner continuously had caused three accidents including the present one, cannot try to put the blame on the rider of the two-wheeler. Therefore, the sole contention made by the petitioner that while he performed his duty in Route No.300 in the vehicle No.A342 plying between Chennai and Chidambaram, he involved the vehicle by hitting a motorist near Morapakkam Village from behind, was repelled, because, at the time of accident, four persons were riding on the two-wheeler and the wife, aged about 50 years and the daughter, aged about 7 years of the rider of the two-wheeler suffered major injuries and died on account of the accident caused by the petitioner. Hence, the second respondent Department has rightly appointed a retired District Judge Mr.Natarajan as the enquiry officer. For the reason that the charge memo issued against the petitioner was not properly and satisfactorily explained by the petitioner in his explanation, the enquiry officer also, after complying with the principles of natural justice, conducted the enquiry going to the charges mentioned in the charge memo. The petitioner was also given all reasonable opportunities to defend his charges. After accepting the notice issued by the enquiry officer, the petitioner also attended the enquiry and also cross examined the management witnesses. Further the petitioner was also given sufficient opportunities in all respects during the course of enquiry. Finally the enquiry officer, finding that the charges levelled against the petitioner were proved, submitted his report holding him guilty of all the charges. Thereafter, he was also furnished with the copy of the report along with the second show cause notice calling upon him to submit his written representation and after receipt of the written representation to the enquiry report, the disciplinary authority, taking note of the fact that the petitioner has been repeatedly resorting to the fatal accident, came to the conclusion that he was careless and negligent in driving the vehicle on the road. Although the petitioner was punished five times in the past and not able to mend his ways, the disciplinary authority thought it fit to impose the punishment of dismissal from service. This aspect also has been properly and rightly assessed by the Second Additional Labour Court, Chennai in its award. Therefore, when it is not the first fatal accident or the second fatal accident, but the third fatal accident taking away two innocent lives, even after the third fatal accident, the petitioner is not at all justified in questioning the correctness of the award and no leniency be shown to the petitioner by this Court.

5. I fully agree with the arguments advanced by the learned counsel for the second respondent. The reason is that the enquiry officer Mr.S.Natarajan, who was a retired District Judge, on being appointed to go into the correctness of the

charges levelled against the petitioner, issued notice calling upon the petitioner to take part in the enquiry, on receipt of notice, the petitioner also took part in the enquiry and cross examined the management witnesses. Taking note of the fact that the accident report clearly proved and substantiated the charges levelled against the petitioner that the petitioner was rash and negligent in driving the vehicle, which ultimately caused the fatal accident taking away the lives of the wife and daughter of the two-wheeler rider, the enquiry officer submitted his report and this has been rightly judged by the disciplinary authority. When the disciplinary authority, after receipt of the report filed by the enquiry officer, rightly going to the past records of the petitioner, taking note of the fact that on the earlier occasions also the petitioner had committed two fatal accidents and thereby caused huge loss to the Transport Corporation for meeting out the awards passed by the Motor Accidents Claims Tribunal, has rightly imposed the punishment of dismissal from service, which has been analysed by the Second Additional Labour Court, the sole contention made by the learned counsel for the petitioner that there was no proper examination of the Conductor of the bus, is wholly unacceptable, inasmuch as it is not the case that the petitioner, for the first time, had been charged for causing the fatal accident. Since in his 14 years of service had suffered five punishments and for two fatal accidents, the petitioner also suffered minor punishments, the management, having shown leniency on two occasions, has rightly imposed the right punishment. Hence, this Court, sitting under Article 226 of the Constitution, is not inclined to interfere with the impugned award. Accordingly, confirming the award, the writ petition is dismissed. No costs.

6. The learned counsel for the petitioner requested this Court to direct the second respondent to pay the petitioner his contribution to the provident fund and gratuity. If the petitioner is entitled to get gratuity and his contribution to the provident fund, the same shall be paid by the second respondent within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer
II Additional Labour Court
Chennai 600 104

2. The Management of
State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai 600 002.

+1 cc to Mr.S.T.Varadarajulu, Advocate, Sr.No. 33029

+1 cc to Mr.M.Chidambaram, Advocate, Sr.No. 32803

CSL/10.05.2019

W.P.No.15180 of 2009



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