



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.32447 of 2004 & 50104 of 2006
and

W.P.M.P.Nos.2575, 39311, 46886 of 2004 and 216 of 2010
in

W.P.No.32447 of 2004

The Managing Director,
Tamilnadu State Transport
Corporation (Salem) Ltd.,
Salem.

.. Petitioner
(in W.P.No.32447 of 2004)

C.Selvam

.. Petitioner
(in W.P.No.50104 of 2006)

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

.. 1st Respondent
(in both W.Ps)

2.C.Selvam

.. 2nd Respondent
(in W.P.No.32447 of 2004)

2.The Managing Director,
Tamilnadu State Transport
Corporation (Salem) Ltd.,
Salem.

.. 2nd Respondent
(in W.P.No.50104 of 2006)

Prayer in W.P.No.32447 of 2004: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records of the 1st Respondent in I.D.No.209 of 2002 dated 11.11.2003 and quash the same.

Prayer in W.P.No.50104 of 2006: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the Award dated 11.11.2003 passed by the 1st respondent in I.D.No.209 of 2002, quash the same in so far as depriving the petitioner back wages and other attendant benefits for the period of non-employment and consequently direct the 2nd



respondent to reinstate the petitioner with continuity of service, back wages and other attendant benefits.

In W.P.No.32447 of 2004:

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For Petitioner : Ms.Rajini Ramadoss
For R1 : Court
For R2 : Mr.V.Ajay Khose

In W.P.No.50104 of 2006:

For Petitioner : Mr.V.Ajay Khose
For R1 : Court
For R2 : Ms.Rajini Ramadoss

C O M M O N O R D E R

W.P.No.32447 of 2004 is filed to issue writ of Certiorari to call for the records of the 1st Respondent in I.D.No.209 of 2002 dated 11.11.2003 and quash the same.

2.W.P.No.50104 of 2006 is filed to issue writ of Certiorarified Mandamus, calling for the records pertaining to the Award dated 11.11.2003 passed by the 1st respondent in I.D.No.209 of 2002, quash the same in so far as depriving the petitioner's back wages and other attendant benefits for the period of non-employment and consequently direct the 2nd respondent to reinstate the petitioner with continuity of service, back wages and other attendant benefits.

3.The issue involved in both the Writ Petitions are one and the same and hence, they are disposed of by this common order. The parties are referred to as per their rank in the Labour Court for the sake of convenience.

4.The petitioner was appointed as driver in the respondent-Transport Corporation on 06.01.1997. On 22.08.2000, while the petitioner was driving the bus from Dharmapuri to Salem, an accident occurred between the bus and a car, which was coming from Salem to Dharmapuri. The respondent issued a charge sheet stating that the accident occurred only due to rash and negligent driving by the petitioner. The petitioner submitted his explanation on 04.11.2000, denying the charges. Not being satisfied with the explanation submitted by the petitioner, the respondent-Transport Corporation on 27.11.2000 appointed an Enquiry Officer to conduct enquiry. And after conducting the enquiry, the Enquiry Officer by the report dated 28.11.2000 held that all the charges leveled against the petitioner were proved. The respondent-Transport Corporation issued 2nd show cause notice on 19.12.2000, calling upon the petitioner to submit his



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explanation as to why he should not be terminated from service. The petitioner submitted his explanation on 27.12.2000 to the second show cause notice. Not being satisfied with the explanation given by the petitioner, the respondent-Transport Corporation by the order dated 27.12.2001, dismissed the service of the petitioner.

5.The petitioner raised Industrial Dispute in I.D.No.209 of 2002, before the Labour Court, Salem (hereinafter referred to as "Labour Court"). Before the Labour Court, both the petitioner and the respondent-Transport Corporation did not let in any oral evidence. The respondent-Transport Corporation marked 13 documents as Exs.R1 to R13. The petitioner did not file and mark any documents. The Labour Court considering the pleadings and documents filed by the respondent-Transport Corporation, held that it cannot be said that the petitioner was solely responsible for the accident and ordered reinstatement of the petitioner into service with continuity of service but without back wages and other attendant benefits. Against the said order, the petitioner has filed Writ Petition in W.P.No.50104 of 2006 and the respondent-Transport Corporation has filed Writ Petition in W.P.No.32447 of 2004.

6.Mr.V.Ajay Khose, learned counsel appearing for the petitioner contended that the respondent-Transport Corporation has not let in any evidence to prove that the accident occurred only due to rash and negligent driving by the petitioner. The officers were not eye-witness to the accident. In the enquiry report, the investigator of the Transport Corporation has stated that the accident occurred due to 75% negligence on the part of the driver of the car and 25% negligence on the part of the driver of the bus belonging to the respondent-Transport Corporation, the petitioner. In spite of the same, the Transport Corporation framed charges, conducted enquiry and dismissed the petitioner from service. The Labour Court having held that the accident occurred when the driver of the car tried to over take a lorry and turned to the right hand side, the accident occurred, erred in not awarding backwages and attendant benefits. The Labour Court having held that the Transport Corporation has not let in any contra evidence and failed to disprove the stand of the petitioner, ought to have awarded backwages and attendant benefits. The learned counsel for the petitioner further contended that the Labour Court failed to see that not giving attendant benefits would deprive the petitioner's present and future pay and would affect his terminal benefits and prayed for allowing the W.P.No.50104 of 2006 filed by the petitioner and dismissal of W.P.No.32447 of 2004 filed by the Transport Corporation.

7.Per contra, Ms.Rajini Ramadoss, learned counsel appearing for the respondent-Transport Corporation contended that the



Labour Court erred in holding that the petitioner is not solely responsible for the accident. The Labour Court failed to consider that in the accident, three persons who traveled in the car died. The conductor and petitioner also sustained injuries. The Labour Court erred in holding that the accident would not have occurred had the driver of the Maruthi car not turned to the right hand side. The Labour Court erred in observing that the Transport Corporation did not let in any evidence to disprove the evidence of the petitioner. The award of the Labour Court ordering reinstatement with continuity of service is liable to be set aside and prayed for allowing W.P.No.32447 of 2004, filed by the Transport Corporation and dismissal of W.P.No.50104 of 2006, filed by the petitioner.

8. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent-Transport Corporation and perused the entire materials on record.

9. From the materials available on record, it is seen that the charges leveled against the petitioner is that on 22.08.2000, he drove the bus in a rash and negligent manner and dashed against the car which was coming in the opposite direction. On the other hand, it is the contention of the petitioner that the accident has occurred only due to rash and negligent driving by the driver of the car, who was coming in the opposite direction. In the domestic enquiry, the Transport Corporation examined 2 witnesses and both of them were not eye-witness. The petitioner did not examine himself or any other witness to prove his stand. Before the Labour Court, the petitioner did not let in any oral or documentary evidence. The respondent-Transport Corporation did not let in any oral evidence but marked 13 documents as Exs.R1 to R13. It is not in dispute that the petitioner was driving the heavy vehicle and ought to have been cautious while driving the bus. From the stand taken by the petitioner, it is seen that the driver of the car tried to over take a lorry and on seeing the bus coming in the opposite direction, turned the car to the right hand side and thus the accident has occurred. The Labour Court appreciating these facts in proper perspective, has held that the petitioner cannot be held to be solely responsible for the accident. From the materials on record, it is seen that the accident could have been averted, had the petitioner been cautious and careful while driving the bus, taking into consideration the light motor vehicles using the road in the same direction and opposite direction. The Labour Court did not accept the contention of the Transport Corporation that the petitioner was solely responsible for the accident and has contributed certain extent of negligence for the accident, held that order of dismissal is not proper. The Labour Court considering the above facts and past records of the petitioner, ordered reinstatement with continuity of service but without



backwages and attendant benefits. The petitioner has not pleaded that he was not gainfully employed elsewhere from the date of dismissal and suffered monetary loss. The petitioner did not examine himself before the Labour Court to depose that he was not gainfully employed from the date of termination. Except the pleading that the petitioner could not seek employment at this age, there is nothing on record to show that the petitioner was not gainfully employed during that time. Even in the grounds raised in W.P.No.50104 of 2006, filed by the petitioner, no ground is raised that the petitioner was not gainfully employed from the date of termination. In view of the above facts, the award of the Lower Court denying backwages to the petitioner is valid and legal and there is no error in the award passed by the Labour Court, warranting interference by this Court.

10.The contention of the learned counsel appearing for the petitioner that denial of attendant benefits would affect his present and future pay and terminal benefits and the Labour Court having awarded continuity of service ought to have granted attendant benefits also has considerable force. The reason given by the Labour Court for denying the attendant benefits is not a valid reason. The Labour Court having awarded continuity of service, ought to have awarded attendant benefits also. In the result, the award of the Labour Court is modified to the extent of granting attendant benefits to the petitioner. In all other aspect, the award of the Labour Court is confirmed.

11.The learned counsel appearing for the respondent-Transport Corporation contended that the date of award reinstating the petitioner with continuity of service is 11.11.2003 and the petitioner was reinstated into the service on 11.11.2005. It is made clear that the petitioner is not entitled for any backwages.

12.In the result, W.P.No.50104 of 2006, filed by the petitioner is allowed in part and W.P.No.32447 of 2004, filed by the respondent-Transport Corporation is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
Labour Court, Salem.



2.The Managing Director,
Tamilnadu State Transport
Corporation (Salem) Ltd.,
Salem.

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+1cc to Mr.S.Rajeni Ramadoss, Advocate, S.R.No.53961

+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.53045

W.P.Nos.32447 of 2004 & 50104 of 2006 and
W.P.M.P.Nos.2575, 39311, 46886 of 2004 and
216 of 2010 in
W.P.No.32447 of 2004

RR (CO)

RRS (09/08/2019)