

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.Nos.25244 and 11256 of 2011 and
M.P.No.1 of 2011

K.Arumugam

... Petitioner in W.P.No.25244 of 2011

The Management,
State Express Transport Corporation,
Rep by its General Manager,
No.2, Pallavan Salai,
Chennai 600 002.

... Petitioner in W.P.No.11256 of 2011

Vs

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

2.State Express Transport Corporation,
Rep. by its General Manager,
No.2, Pallavan Salai,
Chennai 600 002.

... Respondents in W.P.No.25244 of 2011

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

2.K.Arumugam

... Respondents in W.P.No.11256 of 2011

PRAYER in W.P.No.25244 of 2011: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the award dated 06.01.2010, passed by the first respondent in I.D.No.528/2001, quash the same in so far as imposing petitioner the punishment of stoppage of increment for one year without

cumulative effect and also depriving him the entire backwages and consequently, direct the second respondent to pay him full backwages for the period of non-employment apart from the relief of reinstatement with continuity of service and other attendant benefits awarded by the first respondent.

PRAYER in W.P.No.11256 of 2011: Petition filed under Article 226 of the Constitution of India, praying to issue a writ to call for the records of the first respondent in I.D.No.528 of 2001, dated 06.01.2010 and quash the same.

In W.P.No.25244 of 2011

For Petitioner : Mr.V.Ajoy Khose

For Respondents : R1-Court
: Mr.R.P.Prathap Singh for R2

In W.P.No.11256 of 2011

For petitioner : Mr.R.P.Prathap Singh

For Respondents : R1-Court
: Mr.V.Ajoy Khose for
Mr.R.Krishnaswamy for R2

C O M M O N O R D E R

The writ petition in W.P.No.25244 of 2011 has been filed by the petitioner to call for the records pertaining to the award dated 06.01.2010, passed by the first respondent in I.D.No.528/2001 and quash the same in so far as imposing the punishment of stoppage of increment for one year without cumulative effect to the petitioner and also depriving him the entire backwages and consequently, direct the second respondent to pay him full backwages for the period of non-employment apart from the relief of reinstatement with continuity of service and other attendant benefits awarded by the first respondent.

2. The petitioner joined the service of the second respondent Corporation as Driver on 20.10.1990. He was made permanent with effect from 01.01.1992. According to him, he served in the Corporation without any blemish and in appreciation of the same, a certificate was issued to him on 05.03.1997 and cash award was also given to the petitioner. Because of his blemishless record of service, the petitioner was also given the benefit of first review and promoted him as Senior Driver with higher pay scale.

3. On 02.05.1998, the petitioner was assigned duty in Route No.137 in the Bus bearing No.TN.01 N 6015. The petitioner took the Bus from Madurai at 21.30 p.m. and at around 3.00 a.m. on the night of 02.05.1998 and 03.05.1998, an accident happened. In which, few persons have died and several persons were injured. Even the petitioner appeared to have lost his conscious in the accident.

4. According to the petitioner, one Moped which had crossed the road suddenly, the petitioner in order to avoid hitting the Moped, had applied break suddenly which led to the accident. According to him, he had not negligently caused the accident, though the same was very unfortunate. Thereafter, a charge memo was issued on 03.06.1998 and in response to the same, the petitioner explained that he was not responsible for the accident. He was also placed under suspension by order dated 04.05.1998 and subsequently, the same was revoked on 18.07.1998. Thereafter, an enquiry was initiated into the charges. The enquiry report was submitted on 21.10.1998, holding the petitioner guilty of the charges.

5. The disciplinary authority, the second respondent herein, accepted the findings of the Enquiry Officer and the second show cause notice was issued on 07.05.1999, proposing the penalty of dismissal from service. The petitioner submitted his explanation to the second show cause notice on 29.05.1999. However, by a non-speaking order, the second respondent rejected the petitioner's explanation and dismissed him from service by order dated 12.07.1999. Against the said order, an appeal was preferred on 31.07.1999 before the Managing Director and the same was rejected by one line order on 19.04.2000.

6. Against the order passed by the disciplinary authority as well as the appellate authority, the petitioner raised a dispute in I.D.No.528 of 2001 and the same was referred for adjudication before the first respondent. The first respondent Labour Court after adverting to various materials including the evidence and the enquiry finding, has come to the conclusion that the charges against the petitioner were not established at all. According to the Labour Court, none of the crucial witnesses were examined and no evidence was let in, in establishing the charges framed against the petitioner.

7. The Labour Court has given a categoric finding that the charges against the petitioner were not proved and proceeded to replace the punishment of dismissal from service into one of stoppage of increment for two years without cumulative effect. The Labour Court has also denied the backwages from the date of dismissal from service till the date of the award on 06.01.2010.

As against the same, the petitioner has filed the present writ petition (W.P.No.25244 of 2011), questioning the award in regard to the punishment imposed on him and also the denial of backwages. The Management has also filed a writ petition in W.P.No.11256 of 2011, questioning the award of interfering with the order of dismissal from service.

8. The learned counsel for the petitioner would submit that once the Labour Court has categorically held that the charges were not established against the petitioner, the Labour Court ought not to have imposed a penalty on him. Such approach by the Labour Court is unheard and cannot be countenanced in law. When the Labour Court has given a clean chit in regard to the charges framed against the petitioner, it ought to have ordered reinstatement with full backwages and all attendant benefits. In this case, the Labour Court has not only imposed the modified penalty, but also denied the backwages for a period of ten years. Therefore, he would submit that the award of the Labour Court is liable to be interfered with.

9. On the other hand, the learned counsel for the Management would submit that the Bus driven by the petitioner, met with the serious accident due to the rash and negligence on his part. Because of the accident, four persons have died and some of the passengers were injured grievously. The Bus was also damaged extensively. Therefore, the Labour Court ought to have considered the magnitude of the accident, caused by the petitioner while he was driving the vehicle. But, unfortunately, on the basis of its own understanding of the evidence, it has wrongly come to the conclusion that the charges against the petitioner were not proved. In view of the fact that the accident was caused by the petitioner due to his negligence, the original order of dismissal from service ought to have been upheld by the Labour Court. The Labour Court ought not be substituted the stoppage of increment in the place of dismissal from service. In any event, he would support the ultimate award of the Labour Court denying the backwages, otherwise.

10. Heard the learned counsels appearing for the parties. Considering the rival submissions and the award passed by the Labour Court which is impugned in the writ petitions, it is a case of clear finding of fact rendered by the Labour Court that the charges framed against the petitioner were not established at all as they were no worthwhile evidence which was let in, on behalf of the Management Corporation to establish the charges. When such finding of fact is rendered by the Labour Court, unless the same found to be illegal and perverse, this Court by exercising its jurisdiction under Article 226 of the Constitution of India, cannot substitute its views on such factual finding rendered by the Labour Court. Therefore, the

finding of the Labour Court does not call for any interference from this Court.

11. By holding so, this Court has to see whether the punishment imposed by the Labour Court in this case is valid in the eye of law. The punishment as imposed by the Labour Court appears to be minor one. Taking note of the overall circumstances of the case that the workman had contributed to the cause of the accident on the fateful day, in which, some persons have died, however, taking lenient view in the matter, the Labour Court felt that imposition of minor punishment would suffice in the circumstances of the case. At the same time, the Labour Court also felt that the denial of backwages was reasonable and therefore, it denied the back wages from the date of dismissal from service till the date of the award.

12. This Court in consideration of overall circumstances of the case, is of the view that the punishment ultimately imposed by the Labour Court is not too severe in nature for the petitioner to have legitimate grievance against it. Rightly or wrongly, the Bus which was driven by the petitioner had met with an accident resulted in loss of lives and injuries to several passengers, which was an admitted fact. Therefore, the minor penalty of stoppage of increment for two years cannot said to be invalid or wrong. At the same time, the denial of back wages for the petitioner from the date of dismissal from service till the date of the award, appears to be too harsh for the simple reason that the Provident Fund for the period could not be contributed, if the back wages is denied. In which event, the petitioner would not be able to get the benefit of continuity of service and also would not be able to get his retirement benefits.

13. It appears that the petitioner on attaining the age of superannuation, has retired from service on 31.12.2016 and In fact, during the pendency of the litigation before this Court, according to the learned counsel for the Management, the petitioner has been paid 17(b) wages. In view of the totality of the circumstances, this Court is of the view that the petitioner is entitled to have the provident fund contribution paid from the backwages due to him from the date of dismissal from service till the date of the award. Apart from the contribution towards provident fund, the petitioner is not entitled to any other remaining backwages.

14. Even otherwise, in respect of other portion of the award viz., the punishment imposed on the petitioner shall remain intact and only the denial of backwages by the Labour Court for the entire period of non-employment of the petitioner from the date of dismissal till the date of the award, alone shall stand modified as indicated above. In view of the retirement of the

petitioner as early as on 31.12.2016, the Corporation is directed to make the contribution towards Provident Fund of the petitioner without any further delay and release all his retirement benefits. Such exercise shall be initiated and completed within a period of twelve weeks from the date of receipt of a copy of this order.

15. With the above direction, both the writ petitions in W.P.No.25244 of 2011 and W.P.No.11256 of 2011, stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Presiding Officer,
II Additional Labour Court,
Chennai.
- 2.The General Manager,
State Express Transport Corporation,
No.2, Pallavan Salai,
Chennai 600 002.

+2cc to Mr.R.P.Prathap Singh, Advocate Sr.22785,22786
+1cc to Mr.V.Ajay Khose, Advocate Sr.22907

W.P.No.25244 of 2011

ssv[co]
srg 6/5/2019

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