

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP. No.2909 of 2011
and
MP. No.1 of 2011
and
MP. No.1 of 2012

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
No.27, Railway Station New Road,
Kumbakonam - 612 001,
Rep. by its Managing Director. ... Petitioner

vs.

1.The Presiding Officer,
Labour court, Cuddalore.

2.C.Sivakumar. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records concerning with I.D.No.41 of 2005 order dated 26.04.2010 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.D.Venkatachalam

For Respondent : R1-Court
Mr.S.Pushpakaran for R2.

ORDER

The petitioner has filed the present writ petition challenging the award passed by the 1st respondent in I.D. No.41 of 2005 dated 26.04.2010.

2. The 2nd respondent/employee was working as a driver in the petitioner-Transport Corporation from the year 1993 and was made as a permanent employee in the year 1995. When the 2nd respondent was working with the Myladuthurai town Branch, while on duty in the bus bearing Reg. No.TN.49.N.0608 (Route No.456-B)

on 03.09.2003, from Mayiladuthurai to Kumbakonam at about 09.25 PM, drove the bus and caused accident against a pedestrian, viz., Ramesh who sustained fatal injuries and died on the spot. The petitioner/transport corporation issued a charge memo on 11.11.2003, for which the 2nd respondent/employee submitted his explanation dated 26.11.2003. However, the petitioner-Transport Corporation, not satisfied with the above said explanation, ordered domestic enquiry and served enquiry notice on 10.01.2004. On the Charges framed against the 2nd respondent, sufficient opportunities were given to the 2nd Respondent/Workman to defend his case. witnesses were examined on the side of the petitioner/management as well as on the side of the 2nd respondent/employee and therefore, the petitioner/management has followed the principles of natural justice. The management after analysing the entire documents, enquiry proceedings and findings and after taking into consideration the 2nd respondent/employee's previous records, passed an order dated 25.08.2004 dismissing him from service.

3. Challenging the said order dated 25.08.2004, 2nd respondent has filed an Industrial Dispute in I.D. No.41 of 2005 before the 1st respondent/Labour Court. The Labour Court/1st respondent has considered the claim of the 2nd respondent and allowed the said Industrial Dispute and modified the punishment of 'dismissal from service' to 'reinstatement without back wages'. Challenging the aforesaid award passed by the 1st respondent, the petitioner/ management has filed the present Writ Petition before this Court.

4. The Labour Court, in the award dated 26.04.2010, pointed out that the 2nd respondent/employee was punished for causing accident involving three fatal cases by driving the vehicle in a rash and negligent manner. The Labour Court further referred to the statement of one Pannerselvam in Ex.M.9 and found that the victim was thrown out and the front side of the body of the bus dashed against him. As such, the Labour Court held that the punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned and therefore, modified the punishment of dismissal imposed on the workman to reinstatement without backwages.

5. A close scrutiny of the award passed by the Labour court shows that Mr.Paneerselvam has clearly deposed in his statement that the accident had occurred only due to the negligence on the part of the 2nd respondent/employee which caused death of the victim. Thus the Labour Court found that charges are proved in part and therefore, the 2nd respondent/employee is entitled for reinstatement with continuity of service without any back wages as ordered by the Labour Court.

6. Considering the previous records of the 2nd respondent/employee which shows that he was involved in various accidents during his employment which resulted in some fatal cases, this court is of the view that the punishment awarded by the petitioner/management is based on proper appreciation of facts and the same need not be interfered with. It is pertinent to point out that the Labour Court itself had accepted the statement made by the Management witnesses and passed the impugned order, which is liable to be set aside. Accordingly, while considering the service rendered by the 2nd respondent/Workman, this court deems it fit to modify the award passed by the Labour court in I.D.No.41 of 2005 dated 26.4.2010, so as to enable the 2nd respondent/Workman to receive monetary benefits.

7. In view of the above discussion, the punishment imposed on the 2nd respondent/employee viz, dismissal from service, by the Petitioner/Management is modified as compulsory retirement, so as to enable the 2nd respondent/employee to get the retirement benefits from the Transport Corporation. The Petitioner/management is directed to settle all the benefits to the 2nd respondent/employee, as per law as expeditiously as possible, preferably within a period of twelve weeks from the date of receipt of a copy of this order.

8. In the result, the Writ Petition is partly allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkp/nvsri

To

The Presiding Officer,
Labour court, Cuddalore.

+1 cc to Mr.S.Pushpakaran, Advocate, S.R.No.2237
+1 cc to Mr.D.Venkatachalam, Advocate, S.R.No.2805

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GJ(CO)
SSM(25/03/2019) .