

THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.08.2019
CORAM
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN
W.P.No.21508 of 2014
and M.P.Nos.1 and 2 of 2014

The Management
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
Dharmapuri Division,
Bharthipuram, Dharmapuri - 05
Rep. by its General Manager

...

Petitioner

Vs.

1. R.Paramasivam
2. The Presiding Officer,
Labour Court,
Salem.

....

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records of the order passed by the second respondent in I.D.No.18 of 2011 dated 01.04.2013 and to quash the same as illegal.

For Petitioner : M/s.Rajeni Ramadoss

For Respondents : Mr.K.V.Shanmuganathan for R1
R2- Court

O R D E R

The Petitioner/management has come forward with the present writ petition challenging the award of the Labour Court in I.D.No.18 of 2011 dated 01.04.2013, wherein, the Labour Court had directed reinstatement with continuity of service, but without backwages.

2. The employee joined the service in the year 1987 and attained the age of superannuation in March 2017 and therefore, as per the Award, reinstatement ordered to the employee may not arise.

3. The only benefit that may be available to the employee is with regard to arrears of wages prior to 31.03.2013, i.e.,

date of superannuation, taking into account the award of the Labour Court, dated 01.04.2013.

4. This Court while admitting the Writ Petition vide order dated 11.08.2014, granted interim order of staying the operation of the award passed by the Labour Court in I.D.No.18 of 2011 dated 01.04.2013. Therefore, the petitioner has not availed any monetary benefits till date.

5. According to the Petitioner/Management, the employee/driver was involved in 48 accidents, out of which, 4 fatal accidents, including the present one. It is further stated that a complaint/FIR has been lodged against the employee, on account of negligence. The accident has taken place on 02.01.2009. While the employee was plying the bus, it hit against a cyclist, who died on the spot. Two witnesses have been examined on behalf of the Management. Both witnesses have stated that the fault is on the cyclist who without noticing the bus, dashed against the bus which resulted in the accident. This evidence has been taken note of by the Labour Court. The Labour Court has held that the charges against the employee have not been established.

6. When there is a finding of the fact by the Labour Court, after analysing the evidence, more particularly, taking note of the evidence let in before the domestic enquiry and examination of witnesses with regard to the said accident, the same need not be interfered with unless there is perversity. Finding of the Labour Court need not be interfered with even if there is some error on facts, is the decision of the Kerala High Court in Instrumentation Employees' Union v. Labour Court, Kozhikode reported in 1993-1-L.L.N. 75, and it is relevant to extract hereunder paragraph 16:-

" 16. As pointed out by the Supreme Court in Syed Yakoob Vs. K.S.Radhakrishnan (AIR 1964 SC 477), the jurisdiction of the High Court to issue writ of certiorari or direction under Art.226 or Art.227 of the Constitution of India is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. Findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal has erroneously refused

to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which had influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari under Art.226 or Art.227 of the Constitution of India. It is further pointed out by the Supreme Court in Syed Yakoob case [AIR., 1960 S.C.477] (vide supra), that a finding of fact recorded by a Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ court, under Art.226 or Art.227 of the Constitution of India. In Harbans Lal v. Jagmohan Saran [1985 4 S.C.C. 333], also, the above principles have been reiterated by the Supreme Court. It was held that the findings by the authorities rested on evidence and there was no warrant for disturbing the finding of fact in writ proceedings. "

7. In view of the above finding, this court is of the considered view that there is no perversity in the Award and there is no need to interfere with the award, as the Labour Court has gone into all the aspects of the case and passed the award. In such circumstances, the monetary benefits need to be extended to the employee.

8. It is made clear that since this order replaces /modifies the Award of the Labour Court, the Management is expected to implement the Award within a period of 45 days from the date of receipt of a copy of this order in the light of the decision of the Hon'ble Apex Court in the case of Tamil Nadu State Transport Corporation Vs. Neethivilangan, Kumbakonam) reported in (2001) 9 SCC 99. It goes without saying that if any complaint is made by the Workman under Section 29 of the Industrial Disputes Act, 1947, the persons who are falling under Section 32 of the Industrial Disputes Act, 1947, need to be prosecuted and the Government shall sanction prosecution taking note of the decision of Apex Court in the case of Rajkumar Gupta vs. Lt.Governor, Delhi reported in 1997 (1) LLJ 994. Once the prosecution is launched, the appropriate criminal court is expected to take up the matter and it shall proceed with the

matter on a day-to-day basis without adjourning the matter beyond fifteen working days at any point of time so as to bring the issue to a logical end. It is further made clear that if the admitted amount is not paid, it is open to the Workman to seek remedy under Section 33C(1) of the Industrial Disputes Act, 1947, in view of the decision of the Apex Court in the case of Fabril Gasosa vs. Labour Commissioner, reported in (1997) 3 SCC 150 and in case of disputed amount, the computation lies only by invoking Section 33C(2) of the Industrial Disputes Act, 1947.

9. In view of the above reasonings, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Presiding Officer,
Labour Court,
Salem.

+1cc to M/s.Rajeni Ramadoss, Advocate sr.72094

+1cc to M/s.K.V.Shanmuganathan, Advocate sr.72828

W.P.No.21508 of 2014

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