



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2019

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THE HONOURABLE MR.JUSTICE **S . S . SUNDAR**

W.P. (MD)No.10280 of 2013

and

M.P. (MD)No.1 of 2013

The Management,
Tamil Nadu State Transport Corporation
(Madurai Division) Limited,
By-Pass Road, Madurai. :Petitioner

vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.S.Muthuraja :Respondents

PRAYER: Writ Revision Petition filed under Article 226 of Constitution of India, praying to issue Writ of Certiorari, to call for the records in I.D.No.8 of 2011, dated 30.04.2012 on the file of the first respondent and quash the same.

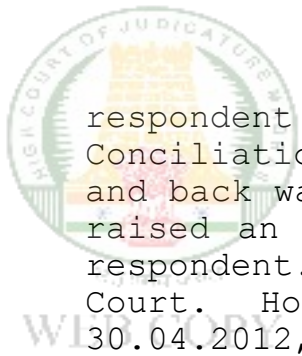
For Petitioner :Mr.J.Senthilkumariah

For R2 :Mr.A.Rajaram

ORDER

This Writ Petition is filed for issuing a Writ of Certiorari, to quash the order passed by the Labour Court, Madurai, in I.D.No.8 of 2011, dated 30.04.2012.

2.The second respondent, while he was on duty as Driver, met with an accident. It is stated by the petitioner that the second respondent drove the bus in a rash and negligent manner and dashed against a two wheeler near Vellakal Bus Stop on 10.06.2002. It is admitted that as a result of the accident, two persons died. A criminal case was also registered against the second respondent in Cr.No.276 of 2002. Thereafter, a charge memo was issued to the second respondent on 29.06.2002 and a reply was given by the second respondent to the charge memo. Since the second respondent denied the charges, domestic enquiry was conducted by the Management. After giving full opportunity to the second respondent, the second respondent was terminated from service. Thereafter, the second



respondent approached the Conciliation Officer and submitted a Conciliation Petition to reinstate him with continuity of service and back wages. After failure of conciliation, the second respondent raised an industrial dispute in I.D.No.8 of 2011 before the first respondent. The Management contested the matter before the Labour Court. However, the Labour Court, Madurai, by order dated 30.04.2012, passed the following order:

"The driver can be held liable. The rules of preponderance of probability is also applicable. It is also true that strict rules of evidence act are not applicable in domestic enquiry. There is no direct eye witness in this case. In the domestic enquiry, one Karunai Ragavan was examined. He was not an eye witness. The respondent's officials have not examined the witness examined by police namely Santhanan, Sadiq Batch, Sulkthan Bibi and others. Hence it cannot be said that the driver of the respondent is fully responsible for the accident. Hence the punishment of dismissal is not justified. Normally the worker is entitled to reinstatement with all benefits when the punishment is not pushed. But a worker cannot claim that he should be reinstate with all benefits in every cases. The granting of relief or granting of backwages is discretion power of Court. Under Section 11 A, Court can mould the relief after considering the facts and circumstances.

The granting of back wages is not an automatic one. It is stated by respondent Counsel that the petitioner's past records are very bad. The punishment of dismissal need not be confirmed merely on the basis of past records. There was delay of 8 years in raising the dispute. The petitioner was dismissed from service by order, 22.2.03. The petitioner filed the petition before Labour Officer only 4.4.08. Failure report was submitted on 3.7.09. The petitioner has not take any steps between 22.2.03 to 4.4.08. The petitioner need not be dismissed on the ground of delay. There is no limitation for raising the dispute before the Labour Court. The delay can be a factor for denial of backwages. Under these circumstances, the petitioner is entitled to continuity of service except the period from 22.2.03 to 4.4.08. The petitioner is entitled to reinstatement with attendant benefits but without back wages. The points are answered accordingly."

3.Challenging the order of Labour Court, Madurai, the Management has preferred the above Writ Petition.

4.The learned Counsel for the petitioner submitted that the impugned order of first respondent is arbitrary, as the Enquiry Officer has not properly conducted the enquiry properly by adhering to principles



of natural justice. Since the second respondent committed a serious misconduct of rash and negligent driving, it is stated by the petitioner that the second respondent alone is responsible for the fatal accident. It was further contended by the petitioner in the writ petition that the second respondent approached the first respondent after a delay of eight years from the date of dismissal. The learned Counsel for the petitioner relied upon the past conduct of the second respondent, which were not taken/considered by the Labour Court.

5.In this case, the prime contention of the petitioner was referring to the long delay of eight years in approaching the Labour Court. The charges against the second respondent is only rash and negligent driving resulting in fatal accident. The learned Counsel for the petitioner submitted that the second respondent's prayer for continuity of service cannot be accepted and that the second respondent is not entitled to any service benefits or salary. The Labour Court has considered the entire evidence and came to the conclusion that the second respondent is not fully responsible for the accident. The petitioner had already been acquitted by the Criminal Court in C.C.No.606 of 2002 (In 2005). The judgment of Criminal Court is not relevant for initiating disciplinary proceedings and the disciplinary authority can proceed, despite the Criminal Court has given a verdict in favour of the employee. Though the findings of the Enquiry Officer to some extent is accepted by the Labour Court, the Labour Court has consciously granted continuity of service for a limited period after considering the relevant circumstances. Continuity of service is refused for the period from 22.02.2003 to 04.04.2008.

6.In such circumstances, this Court find no reason to interfere with the order of Labour Court. As a result, this Writ Petition is dismissed and order passed by the Labour Court, Madurai, in I.D.No.8 of 2011, dated 30.04.2012 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

The Presiding Officer,
Labour Court, Madurai.

+1 CC to M/s.J.SENTHIL KUMARAI AH, Advocate (SR-96150[F] dated
05/11/2019)

+1 CC to M/s.A.RAJARAM, Advocate (SR-96114[F] dated 05/11/2019)

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KK/SAR/09.12.2019/4P-4C/