



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2019

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THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD) No.19339 of 2017

and

W.M.P. (MD) No.15648 of 2017

The Management
Tamil Nadu State Transport Corporation,
Nagarcoil Division,
Ranithaottam,
Nagarcoil.

...Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.S.Ramesh

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in the proceedings in I.D.No.31 of 2016 dated 27.02.2017 quash the same.

For Petitioner :Mr.A.Jeyaram

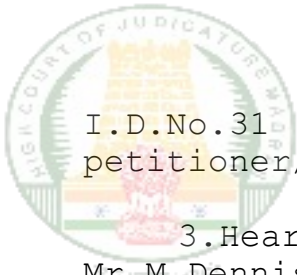
For R1 :No appearance

For R2 :Mr.M.Dennis Joe

ORDER

The instant writ petition has been filed by the petitioner/management challenging the award of the labour Court, Tirunelveli, dated 27.02.2017 passed in I.D.No.31 of 2016.

2.It is the case of the petitioner/management that the second respondent is employed as Driver and due to his misconduct, based on a domestic enquiry report, he was imposed with a punishment of three years increment cut with cumulative effect by order dated 26.05.2011. Aggrieved by the same, the second respondent raised an industrial dispute by approaching the labour Court. The labour Court by its order dated 27.02.2017 in I.D.No.31 of 2016 set aside the order dated 26.05.2011 passed by the petitioner/management. Aggrieved by the award of the labour Court dated 27.02.2017 in



I.D.No.31 of 2016, the instant writ petition has been filed by the petitioner/management.

3.Heard Mr.A.Jeyaram learned counsel for the petitioner and Mr.M.Dennis Joe, learned counsel for the second respondent.

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4.According to the learned counsel for the petitioner, due to the rash and negligent driving of the second respondent, he had caused a fatal accident, for which, a huge compensation claim has already been initiated against the petitioner/management by the legal heirs of the victim before the Motor Accident Claims Tribunal. Further, he submitted that there was also previous misconduct committed by the second respondent and there was also an unexplained delay by the second respondent in raising the industrial dispute before the labour Court.

5.According to the learned counsel for the petitioner, even though the order was passed by the petitioner/management imposing a punishment of three years increment cut with cumulative effect on 26.05.2011, the second respondent raised an industrial dispute only in the year 2016. He drew the attention of this Court to the award dated 27.02.2017 passed by the labour Court and submitted that the labour Court has set aside the order of the petitioner/management imposing punishment of three years increment cut with cumulative effect on the second respondent only on the ground that documents were not produced by both the petitioner/management as well as the second respondent before the labour Court.

6.Per contra, the learned counsel for the second respondent would submit that there was no misconduct committed by the second respondent employee and he was acquitted by the learned Judicial Magistrate, Rameswaram, by order dated 02.12.2011, in C.C.No.88 of 2010 in respect of the fatal motor accident. Against the said judgment, no appeal has been filed and therefore, the finding of the learned Magistrate has attained finality.

7.The learned counsel for the second respondent drew the attention of this Court to the counter affidavit filed by the petitioner/management before the Motor Accident Claims Tribunal, Ramanathapuram, in M.C.O.P.No.74 of 2012, wherein, the petitioner/management has admitted that the second respondent/Driver was not responsible for the cause of motor accident. Therefore, the learned counsel for the second respondent would submit that the labour Court has rightly set aside the punishment imposed by the petitioner/management.

8.The Industrial Dispute Act is a welfare legislation to protect the interest of employees. In the instant case, the only charge made against the second respondent by the petitioner/management is that he had caused fatal accident due to his rash and negligent driving of the bus owned by the



petitioner/management. It is also an admitted fact that even though FIR was registered against the second respondent/Driver, after trial, in C.C.No.74 of 2012, the learned Judicial Magistrate, Rameswaram, has acquitted him on 02.12.2011.

9. In the counter statement filed by the petitioner/management before the Motor Accident Claims Tribunal in M.C.O.P.No.74 of 2012 in paragraph no 3, the petitioner/management has categorically stated that the second respondent was not responsible for the accident. The said counter was also filed as a document and marked as Ex.A1 before the labour Court. Before the labour Court, the second respondent had filed six documents, which were marked as Ex.A1 to A6 and the petitioner/management had filed two documents, which were marked as Ex.P1 and Ex.P2.

10. The trade union represented by its Secretary namely, I.D.Justin was examined as witness on the side of the second respondent, but no witness was examined on the side of the petitioner/management before the labour Court.

11. The labour Court has considered all the aforesaid factors and only thereafter, has set aside the order dated 26.05.2011 passed by the petitioner/management imposing a punishment of three years increment cut with cumulative effect. Being a welfare legislation, the petitioner/management cannot also be allowed to produce the documents at this stage that too after more than three years after the labour Court award. This Court under Article 226 of the Constitution of India is not a Court of appeal and cannot re-appreciate the evidence unless and until the findings of the Court below is arbitrary and perverse. In the instant case, this Court is of the considered view that there is no infirmity in the award passed by the labour Court.

12. Accordingly, there is no merit in the instant writ petition and the same is accordingly, dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar (CS)

TO
THE PRESIDING OFFICER,
LABOUR COURT, TIRUNELVELI
+1cc to Mr.M.DENNIS JOE, Advocate, SR.No. 53401

W.P. (MD) No.19339 of 2017