

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.A.No.2671 of 2012

Tamil Nadu State Transport Corporation
(Villupuram Division-II) Limited,
Vellore,
rep. by its Managing Director ...Appellant/Petitioner

-vs-

1. The Presiding Officer,
Labour Court, Vellore.
2. V.K.Kamal Basha ...Respondents/1st & 2nd Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 02.01.2012 passed in W.P.No.5283/2004 by
a learned Single Judge of this Court.

Prayer in W.P.No.5283 of 2004:

Writ petition filed under Article 226 of the Constitution of
India praying for a Writ of Certiorari calling for the records
of the first respondent in I.D.No.174/99 dated 11.06.2003 and
quash the same.

For Appellant : Mr.C.K.Sathish,
Standing Counsel for TNSTC

For 2nd Respondent: Mr.V.Ajoy Khose

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

This Writ Appeal has been preferred against the order dated
02.01.2012 passed in W.P.No.5283/2004 by a learned Single Judge
of this Court, thereby upholding the award of the Labour Court,
Vellore, to the extent of the order for reinstatement and
continuity of service of the 2nd respondent herein and setting
aside a part of the award directing the payment of back wages
from the date of award till the date of reinstatement instead of
date of dismissal from service till the date of award.

Aggrieved by the said order, the Tamil Nadu State Transport Corporation (Villupuram Division-II) Limited, Vellore is before this Court with the present Writ Appeal.

2. Learned Counsel appearing for the appellant would submit that the 2nd respondent, namely, V.K.Kamal Basha, who was employed as driver in the appellant Transport Corporation from 1993 met with an accident on 25.8.1996 around 2.30 a.m., while driving the bus bearing Registration No.TN23 N0564 from Thiruvannamalai to Chennai near Abdullahpuram, by dashing against an Auto, which claimed the lives of three persons and also causing two grievous injuries and one simple injury to three other persons travelling in the said Auto. Therefore, a Criminal Case was registered against the 2nd respondent herein. Apart from the same, a Charge Memorandum was issued to him on 05.11.1996 levelling as many as four charges and a domestic enquiry was fairly and rightly held against him and after giving him fair and reasonable opportunity, the Enquiry Officer came to the conclusion that all the four charges levelled against him were proved and subsequently, submitted his Report dated 25.08.1997 holding him guilty of all the charges. Thereafter, yet another Show Cause Notice dated 30.08.1997 was issued to the 2nd respondent calling upon his explanation on the report of the Enquiry Officer. Not satisfied with the explanation offered by him, the appellant Corporation dismissed the 2nd respondent from service w.e.f. 16.09.1997. Challenging the same, he filed I.D.No.174/1999 before the Labour Court, Vellore, the 1st respondent herein.

3. Learned Counsel for the appellant would further submit that the 1st respondent Labour Court, based on the pleadings of both sides framed three issues which are as follows:

a. Whether in the Domestic Enquiry conducted by the Enquiry Officer, fair and reasonable opportunity was given to the 2nd respondent herein?;

b. The reasonings and findings given by the Enquiry Officer for passing the order of dismissal against the 2nd respondent were justifiable and acceptable?; and

c. Whether the 2nd respondent is entitled to get reinstatement with back wages along with continuity of service?

Continuing his argument, learned Counsel for the appellant would submit that the Labour Court, while considering the first issue in favour of the Appellant Transport Corporation holding clearly that the domestic enquiry was held fairly giving reasonable and sufficient opportunities to the 2nd respondent, secondly coming to the findings and conclusions reached by the Enquiry Officer, for passing the order of dismissal, by exercising its power conferred under Section 11(A) of the

Industrial Disputes Act, held that the punishment of dismissal from service awarded against the 2nd respondent was shockingly disproportionate to the charges ultimately proved against him and set aside the same on the basis of the evidence produced by both the parties before him and ordered for reinstatement of the 2nd respondent in service with back wages and continuity of service. Aggrieved thereby, the appellant approached this Court by filing W.P.No.5283/2004.

4. Learned Counsel for the appellant Transport Corporation would also submit that one of the grounds raised by the appellant before the learned Single Judge was that when the 2nd respondent while driving the bus belonging to the appellant Transport Corporation bearing Registration No.TN23 N0564 from Thiruvannamalai to Chennai on 25.8.1996 around 2.30 a.m., met with an accident dashing against an Auto near Abdullahpuram, thereby causing the death of three persons and grievous and simple injuries to three persons who were travelling in the said Auto, such a careless driver cannot be kept in service as he would cause risk to the general public. Learned Single Judge of this Court taking into account the fact that the criminal court in which some of the injured witnesses have also deposed, failed to bring home the offence alleged against the 2nd respondent herein and that the 2nd respondent was given the order of acquittal; that the Auto Driver who was found driving the auto carrying six persons therein himself had caused the accident by his rash and negligent driving; that the appellant transport corporation has taken multiple stands one before the Motor Accidents Claims Tribunal and another contrary stand before the criminal court and yet another stand before the Labour Court, dismissed the writ petition modifying the portion of the award thereby making it clear that the 2nd respondent is entitled to get reinstatement with continuity of service and back wages from the date of award till the date of reinstatement instead of the date of dismissal from service till the date of award. Aggrieved thereby, the Transport Corporation has filed this appeal.

5. Learned Counsel for the appellant heavily finding fault with the findings and conclusions reached by the Labour Court, setting aside the dismissal order dated 16.06.1997 awarded against the 2nd respondent with a direction to reinstate him along with back wages and also finding fault with the findings given by the learned Single Judge of this Court affirming the award of the Labour Court, Vellore pleaded that when the 2nd respondent has admittedly driven the bus belonging to the appellant Transport Corporation on the fateful day on 25.08.1996 rashly and negligently from Thiruvannamalai to Chennai, causing accident thereby taking away the lives of three innocent persons and also causing grievous and simple injuries to three persons, allowing the same person-2nd respondent herein to continue in

service, posed a heavy risk to the road users, therefore, such an approach adopted by the Labour Court and the learned Single Judge are opposed to the law. Hence, the same are liable to be set aside.

6. Pleading further, learned Counsel for the appellant submitted that when the burden of proof lies on the delinquent employee-2nd respondent to show that the accident could not be avoided in spite of his cautious and meticulous driving, without there being any explanation offered by him either before the Domestic Enquiry held by the appellant Transport Corporation or before the Labour Court, Vellore, the learned Single Judge of this Court has erroneously allowed the award passed by the Labour Court, Vellore with some modification in respect of the back wages only. Further, the learned Single Judge has miserably failed to see the reasoning given by the Labour Court, the 1st respondent herein that the punishment imposed on the 2nd respondent was shockingly disproportionate to the charges framed. Therefore, the finding and conclusion reached by the learned Single Judge are also liable to be set aside.

7. Arguing further, it is contended that the learned Single Judge has also failed to take into account that there was huge monetary loss and loss of reputation being faced by the appellant Transport Corporation due to the alleged commission of the accident by the 2nd respondent herein. When the 2nd respondent has caused the accident within a short period of 4 years from the date of his joining duty that clearly shows that the punishment of termination dated 16.09.1997 is well founded. Therefore, the same cannot be interfered with any other lighter punishment.

8. Concluding his argument, learned Counsel for the appellant would submit that a perusal of the reasonings given by the Labour Court, Vellore to set aside the order of dismissal dated 16.09.1997 are highly unacceptable because the Labour Court cannot interfere with the quantum of punishment. This has been overlooked by the learned Single Judge, therefore, the appeal deserves to be allowed, it is pleaded.

9. Per contra, learned Counsel for the 2nd respondent would submit that when the 2nd respondent was removed from service on the alleged proven charges in the enquiry held by the Enquiry Officer, aggrieved by the order of dismissal of service, an Industrial Dispute was raised in I.D.No.174/99 before the Labour Court, Vellore, raising, inter alia that he was not afforded with fair and reasonable opportunity and that when the real culprit Auto driver, who was admittedly carrying on 6 passengers in a small auto, driven the vehicle on the wrong side of the road, counted accident, it was 2nd respondent in an effort

to avoid the hitting of the auto and to avoid multiple casualties, drove the bus carefully, in that delicate situation, the alleged accident has taken place which was explained properly before the Labour Court, therefore, the learned Labour Court, Vellore also considering the oral and documentary evidence placed before it including the dismissal order passed by the appellant Corporation has concluded that the prosecution has failed to bring home the offence before the Criminal Court and the 2nd respondent was acquitted on the basis of the evidence of the two injured witnesses and without examining the same witnesses in the departmental enquiry, the order of dismissal was passed by the appellant Corporation on 16.09.1997, therefore, while setting aside the dismissal order directed the appellant to reinstate the 2nd respondent into service with continuity of service with back wages. Aggrieved thereby when the appellant Corporation has filed the Writ Petition, the learned Single Judge after carefully noticing the fact that the appellant Corporation has taken multiple stands, one stand before the Labour Court, another stand before the Criminal Court and yet another contra stand before the Motor Accidents Claims Tribunal, disbelieving the claims and submissions made by the appellant Transport Corporation dismissed the Writ Petition thereby confirming the award passed by the learned Labour Court, however while setting aside the direction given to the appellant Corporation to pay the back wages from the date of accident till the date of award, denied the back wages. Therefore, nowhere, the appellant can find fault with the approach adopted by the learned Labour Court or Learned Single Judge of this Court. Hence, the present Writ Appeal has to be dismissed, he pleaded.

10. Heard the learned Counsel on either side. We have also carefully gone through the materials available on record.

11. At the outset, We find some merit in the arguments advanced by the learned Counsel for the 2nd respondent. The reason being that firstly, though we are surprised to see how the 2nd respondent after causing three deaths and grievous and simple injuries on three persons could be allowed to continue in service, the reasonings given by the learned Counsel for the 2nd respondent that in order to avoid multiple casualties which would likely to arise due to the rash and negligent driving of the Auto by an Auto Driver with 6 passengers, would clearly show that the fault was not found on the part of the 2nd respondent but on the part of the auto driver only. Secondly, when the appellant has prosecuted the 2nd respondent for the alleged accident that took place on 25.8.1996, as rightly canvassed by the learned Counsel for the 2nd respondent, the appellant Transport Corporation has taken three different inconsistent stand before each forum, namely, one stand before the Enquiry Officer in the departmental enquiry, yet another stand before

the Criminal Court and entirely contra stand before the Motor Accidents Claims Tribunal. Therefore, when the appellant was not able to take a definite stand before all these three forums as to the fact that the 2nd respondent is only responsible for the fatal accident that took place on 25.08.1996, we are unable to find any infirmity or error in the impugned order passed by the learned Single Judge. Thirdly, it appears that the 2nd respondent was already reinstated in service and getting his monthly regular salary, therefore, we are of the view that nothing survives for further adjudication in this appeal. In view of all the above, we find no merit in the present appeal.

12. In the result, the Writ Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

tsi
To

The Presiding Officer,
Labour Court, Vellore.

+1 CC to Mr.C.K.Sathish, Advocate sr 23028
+1 CC to Mr.V. Ajoy Khosh, Advocate sr 22895.

W.A.No.2671/2012

RR(CO)
SP(01/07/2021)

सत्यमेव जयते

WEB COPY