



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.29066 & 30933 of 2004

and

W.P.M.P.No.37487 of 2004 in W.P.No.30933 of 2004

W.P.No.29066 of 2004

Baskaran

.. Petitioner

-vs-

1. The Presiding Officer,
Labour Court,
Salem.

2. The Management of Tamilnadu,
State Transport Corporation,
(Salem Division-I),
17, Ramakrishna Road,
Salem.

.. Respondents

W.P.No.30933 of 2004

Tamil Nadu State Transport Corporation (Salem) Ltd.,
Rep. by its Managing Director,
17, Ramakrishna Road,
Salem - 7.

.. Petitioner

-vs-

1. R.Baskaran

2. The Presiding Officer,
Labour Court,
Salem.

.. Respondents

Prayer in W.P.No.29066 of 2004: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the Award dated 01.10.2002 in I.D.No.206/97 passed by the 1st respondent insofar as depriving the petitioner entire backwages, continuity of service, and other attendant benefits, quash the same and consequently, direct the 2nd respondent to reinstate the



petitioner with continuity of service, backwages and other attendant benefits, Award costs.

Prayer in W.P.No.30933 of 2004: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari calling for the records connected with I.D.No.206/97 and quash the award dated 01.10.2002 made therein on the file of the second respondent.

In W.P.No.29066 of 2004:

For Petitioner	:	Mr.V.Ajay Khose
For Respondent-2	:	Ms.K.Thangam for Mr.D.Raghu

In W.P.No.30933 of 2004:

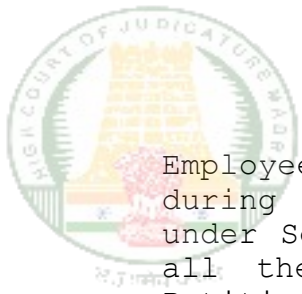
For Petitioner	:	Ms.K.Thangam for Mr.D.Raghu
For Respondent-1	:	Mr.V.Ajay Khose

C O M M O N O R D E R

The Management and the Workman have come forward with the present writ petitions, challenging the respective portion of the award of the Labour Court dated 01.10.2002 in I.D.No.206 of 1997.

2. It is the case of the Management that the Workman was appointed as a Driver in the Management and he was mainly responsible for the accident, due to which, one female passenger died. It is further case of the Management that the Management took into account the past records of the Workman and dismissed him from service. In the Industrial Dispute raised by the Workman against his dismissal, the Labour Court, by its award dated 01.10.2002, has set aside the order of dismissal and granted reinstatement without back wages, continuity of service and other attendant benefits. Against the said award, the Management is before this Court, stating that once the finding of the Enquiry Officer is not perverse, the Labour Court ought not to have interfered with the order of dismissal.

3. Mr.Ajay Khose, learned counsel appearing for the Employee, during the course of arguments, has stated that the



Employee had already attained the age of superannuation and during the pendency of the writ petition, he received wages under Section 17B of I.D. Act and that he is willing to give up all the back wages and restricted the relief in the Writ Petition No.29066 of 2004 with regard to the non-grant of continuity of service. He submitted that even though the Employee has rendered more than 9 years of service, the offer made by the Management that two months' service would be taken into account and the period would be rounded off to 10 years and pensionary benefits would be extended, is not going to give any solution. He also submitted that in case, the Employee had absented earlier, while calculating benefits, there is every possibility of the Management in depriving the benefits, which will create one more round of litigation.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. It is not in dispute that the Employee, who had rendered less than 10 years of service, was dismissed from service for his misconduct and in the Industrial Dispute, questioning the dismissal, he was directed to be reinstated into service as stated supra. A reading of the award makes it very clear that a Criminal Case was registered against the Lorry Driver, who drove the vehicle from East to West and the Lorry Driver had also admitted the offence before the Criminal Court and paid the fine amount. Though the decision of the Criminal Court may not be binding on the departmental proceedings, the observations and the admission have got to be taken into account, while considering the charges levelled against the Employee. When the Lorry Driver had admitted the offence and paid the fine amount, the mistake on the part of the Lorry Driver has been duly proved and in that event, as rightly held by the Labour Court, imposing the capital punishment of dismissal from service is bad. Further, when the Driver of the bus was not solely responsible for the accident, a minor punishment should have been imposed upon him. The Labour Court, while exercising the powers under Section 11-A of I.D.Act, 1947, interfered with the punishment and ordered reinstatement, but denied back wages, continuity of service and other terminal benefits.

6. I find much force in the contention of the learned counsel appearing for the Employee. As vividly observed by the Labour Court, for the death caused in an accident and when the Employee was not mainly responsible for the same, the denial of back wages to the Employee itself is a major punishment and therefore, depriving continuity of service is highly prejudicial, not only to the Workman, but also to the entire family, as there is a chance of depriving the pension payable to the employee also, which is the only source of income to eke out



his livelihood after attaining the age of superannuation.

7. It is seen that the award of the Labour Court is based on a finding of fact and therefore, I find that there is no justification to grant the relief sought for by the Management in W.P.No.30933 of 2004. It is true that the past record can be taken into account for imposing a punishment, provided the present charges are duly proved. In the case on hand, the Lorry Driver had admitted that he was responsible for the accident and paid the fine amount and hence, it can be implied that on account of the mistake committed by the Lorry Driver, the accident had taken place. That being the case, the denial of back wages can be justified, whereas, depriving continuity of service, for the death of a lady cannot be justified, as compensation would be paid to the deceased family under the Motor Accident Claims Act and that both the drivers are jointly and severally liable for the accident. Since the mistake was not purely on the part of the Workman, depriving continuity of service, in my view, is a harsh punishment.

8. In the result, the Writ Petition filed by the Employee in W.P.No.29066 of 2004 is allowed and the award is modified into the one of reinstatement with continuity of service, but without back wages. The entire service of the Employee from the date of his joining into service, till the age of superannuation shall be taken into account for the purpose of enabling the Employee to get Gratuity, Pension and Provident Fund. The Writ Petition filed by the Management / Transport Corporation in W.P.No.30933 of 2004 is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

rsi

To:

1. The Presiding Officer,
Labour Court,
Salem.



2. The Management of Tamilnadu,
State Transport Corporation,
(Salem Division-I),
17, Ramakrishna Road,
Salem.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.37266

+2ccs to Mr.D.Raghu, Advocate, S.R.No.37469

W.P.Nos.29066 & 30933 of 2004

SR(CO)
SU(22/11/2021)