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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2021

PRONOUNCED ON : 08.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.39708 OF 2005

1.S.Shanmugam (Deceased)

2.Kasthuri

3.Kannika

4.S.Vaitheeswaran

(P2 to P4 substituted as LRs of deceased
sole petitioner vide order dated 06.08.2021
made in WMP.16702 of 2021 in
W.P.39708/2005 by MSRJ)

... Petitioners

Vs.

1. The Presiding Officer,
Cuddalore.

2. The Management of
Tamil Nadu State Transport Corporation,
Kumbakonam.

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the Labour Court, Cuddalore, the first respondent herein relating to the Award in I.D.No.44 of 1997 dated 28.12.2004 and to quash the same and consequently direct the second respondent to reinstate the petitioner (deceased) with continuity of service, backwages and all other attendant benefits and award costs.



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For Petitioners : Mr.R.Sankarasubbu
For Respondent :Mr.L.Ramanathan
No.2 for Mr.D.Venkatachalam

O R D E R

The present Writ Petition is heard through Video Conferencing on 06.08.2021.

2. The first petitioner herein (deceased) had joined the services of the second respondent Management Corporation in the year 1986. On 17.06.1996, he was dismissed from services on a set of proven charges, which was challenged before the Labour Court, Cuddalore in I.D.No.44 of 1997. Through an Award dated 28.12.2004, the Labour Court had held that the disciplinary proceedings against the first petitioner was held in a fair and proper manner and that the punishment of dismissal was also proportionate to the charges. The Award of the Labour Court is put under challenge in the present Writ Petition.

3. Pending the Writ Petition, the first petitioner died on 13.06.2018 and his widow and two children were brought on record as petitioners 2 to 4.

4. One of the main ground raised by the learned counsel for the petitioners is that the domestic enquiry itself was not conducted in a fair and proper manner and that the complaint copy, which culminated into framing of charges, was not supplied, inspite of the request of the deceased employee. The learned counsel submitted that, apart from the only Management Witness M.W.1, no other independent witnesses was examined to substantiate the charges and therefore the findings of the Labour Court itself was perverse. It is also their submission that the punishment is not proportionate to the charges.

5. The learned Standing counsel for the respondent/Management Corporation submitted that the charges were serious in nature and since the first petitioner (deceased) had assaulted his co-worker and was also involved in various delinquencies earlier, the punishment of dismissal can be treated to be proportionate to the charges.

6. The charges against the first petitioner is that on 05.02.1996, he had assaulted a temporary employee inside the bus terminus and thereby caused breach of peace in the working atmosphere. According to the Management, the first petitioner (deceased) had assaulted one temporary employee named Sivabalan. However, the said Sivabalan was not examined as witness either



in the domestic enquiry or before the Labour Court. As a matter of fact, apart from M.W.1, who was a Management Executive, no other witnesses were examined on the side of the Management Corporation.

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7. The deceased employee was set ex-parte in the departmental proceedings and the enquiry officer held that the charges against him to be proved. The show cause notice issued to the deceased employee was also not received by him, since it is claimed that he had refused to receive the same. It is in this background, that the order of dismissal came to be passed.

8. The learned counsel for the petitioners submitted that since the Management Corporation had not supplied the first petitioner with the compliant copy, he was not in a position to participate in the enquiry. On the other hand, the learned counsel for the Management Corporation would submit that, pursuant to the request of the deceased employee for the copy of the complaint, the same was dispatched to him, but he had refused to receive it and therefore the Management Corporation, cannot be found fault. The fact remains that the deceased employee did not have a copy of the complaint made against him and he had not participated in the departmental proceedings also. The Labour Court had found the enquiry to be fair and proper. However, since the employee did not participate in the enquiry and he also did not have the benefit of the complaint copy, this Court in normal circumstances, would have extended an opportunity to such an employee by having the matter remitted back, in exercise of its power under Article 226 of the Constitution of India, in order to re-examine as to whether the enquiry was fair and proper. However, in the instant case, the employee himself died pending the Writ Petition. In these circumstances remitting the matter back to the enquiry officer, is not possible. Thus, if the original punishment of dismissal from services is modified into one of compulsory retirement, thereby enabling the legal representatives to receive the death cum retirement gratuity and pensionary benefits and by withholding the back wages, the ends of justice could be secured.

9. In the light of the above observations, the impugned Award passed by the Labour Court, Cuddalore in I.D.No.44 of 1997, dated 28.12.2004, is quashed and the punishment of dismissal against the deceased employee is modified into "compulsory retirement". Consequently, the first petitioner namely, Late S.Shanmugam shall be deemed to have been reinstated into service and subsequently, retired compulsorily on 17.06.1996. The second respondent herein shall disburse the death cum retirement gratuity and pensionary benefits due to the deceased employee, to the petitioners 2 to 4 herein, within a period of eight weeks from the date of receipt of a copy of this



order. It is made clear that while disbursing the DCRG and Pensionary benefits, the deceased employee shall not be entitled for the back wages during his period of non employment. The Writ Petition thus stands partially allowed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Presiding Officer,
Cuddalore.
2. The Management of
Tamil Nadu State Transport Corporation,
Kumbakonam.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.53077

W.P.No.39708 of 2005

RP(CO)
PM/24/02/2022