



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.23029 of 2018

P.Vetrivel

... Petitioner

-vs-

1.The Branch Manager,
Tamil Nadu State Transport Corporation,
(VPM) Ltd., Uthukottai Branch,
Uthukottai, Tiruvallore District.

2.General Manager,
Tamil Nadu State Transport Corporation,
(VPM) Ltd., Kancheepuram Region,
Kancheepuram.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Award passed by the Labour Court in I.D. No.95 of 2016 dated 02.07.2018 and to quash it and direct the second respondent to reinstate the petitioner on permanent basis, with backwages and continuity of service within a time frame.

For Petitioner : Mr.N.Sundaramurthy

For Respondents: Mr.C.S.K.Sathish for R1 & 2nd Respondent

O R D E R

This Writ petition is filed to quash the Award passed by the Labour Court in I.D. No.95 of 2016 dated 02.07.2018 and to direct the second respondent to reinstate the petitioner on permanent basis, with backwages and continuity of service.

2. The petitioner, who was employed as a temporary Driver on 13.11.1997, caused accident on 12.07.1998, thereby one of the passengers suffered injury, and passed away while in hospitalization. According to the petitioner, there were 110 passengers in the bus and he was not able to notice the deceased passenger through the side mirror as several passengers travelled, hanging on the foot board and that he could not view the passengers at the back entrance. A Criminal case has been filed by the Police against the petitioner (Driver) and the Conductor, which subsequently ended in acquittal. However, only the Conductor was reinstated into service. It is the grievance



of the petitioner that though he has rendered more than 240 days in the calender year of service, he has not been regularised. When the Conductor has been reinstated into service, the act of the management in dismissing the Driver, namely, the petitioner herein amounts to discrimination and there was no equal treatment shown to the petitioner on par with the Conductor. Aggrieved against the said dismissal, the petitioner preferred Industrial Dispute in I.D.No.95 of 2016 before the Labour Court, Chennai.

3. The Labour Court, after considering the claim of the Workman and the counter filed by the Management, apart from the various documentary evidence, came to a conclusion that the domestic enquiry was conducted properly and held that his dismissal is justified on account of his misconduct.

4. It might be true that the petitioner would have been employed against a permanent vacancy, which does not mean that he is entitled to attainment of automatic permanency. The contention of the petitioner that he has rendered 240 days in a calender year and that he should be made permanent, may not be correct in terms of Section 25F of the Industrial Dispute Act, 1947. In case an employee is retrenched from service, he is entitled to 15 days of wages of every completion of one year and there is no provision in the Act that the employee, who has completed 240 days, should be made permanent. In any event, when an employee has been charged by the respondent, the question of granting Permanent Status to that employee, will not arise at all.

5. Two issues have got to be dealt with independently and it will not go together. When it is a case of mis-conduct, the employee needs to establish his case before the Labour Court that the Departmental enquiry conducted by the Management is not fair and proper and that the punishment is disproportionate to the misconduct, for that the Labour Court can interfere with the same under Section 11 (A) of the Industrial Dispute Act, 1947.

6. In the present case on hand, the only issue raised by the employee before the Labour Court was that, the Investigating Officer was not examined. But the Labour Court came to the conclusion that there is not even a whisper made by the employee by means of a letter asking the Investigating Officer with reference to subject him for cross examination. The report Ex.P2 relied upon by the Management would make it very clear that when a man was running and trying to board the bus, he fell down and the vehicle was not stopped, and thereby caused injury and the said passenger died while in hospitalization. It is the duty of the driver to see the rear view mirror while driving the vehicle. The Labour Court, by believing the report / evidence in Ex.P2 in its entirety, rightly held that the petitioner cannot shirk away from the responsibility for causing the accident as he was not diligent and did not take care of safety of the



public. Mere acquittal in the criminal case is not a bar for the Management to proceed with the domestic enquiry against the Driver / petitioner as well as issuance of charges against him. Though a plea was taken that he was in continuous service for 240 days, a reading of the Order of the Labour Court shows that there was a break in his service and therefore, the said plea cannot be accepted.

7. In view of the above, I do not find any infirmity in the Award passed by the Labour Court and the petitioner is unable to show any perversity in the Award of the Labour Court. Hence, the Writ Petition is dismissed devoid of merits. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

vum

To

1.The Branch Manager,
Tamil Nadu State Transport Corporation,
(VPM) Ltd., Uthukottai Branch,
Uthukottai,
Tiruvallore District.

2.The General Manager,
Tamil Nadu State Transport Corporation,
(VPM) Ltd., Kancheepuram Region,
Kancheepuram.

+1cc to Mr.C.S.K.Sathish, Advocate, S.R.No. 23449

W.P.No.23029 of 2018

JPL(CO)
GN(20/07/2021)