



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.15814 OF 2019

AND

WMP NO.15633 OF 2019

The Management,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai-600 002.

...Petitioner

-vs-

Mr.M.Sundaram,
Rep. by the General Secretary,
State Transport Employees Union
(C.I.T.U),
No.2, Pallavan Salai,
Kalairanga Valagam,
Chennai- 600 002.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for records pertaining to the order passed in I.D.No.22 of 2018 dated 04.10.2018 on the file of I Additional Labour Court, Chennai.

For Petitioner : Mr.M.Chidambaram

For Respondent : Mr.S.T.Varadarajulu

O R D E R

This Writ Petition has been filed, challenging the award dated 04.10.2018 made in I.D.No.22 of 2018 dated 04.10.2018 by the I Additional Labour Court, Chennai, reducing the punishment of postponement of annual increment from two years to one year with cumulative effect.

2. The case of the Petitioner / Management is that a Workman, belonging to the Union / Respondent herein was a Driver under the Management and on 13.02.2014 at about 05:50hrs, when the Workman was operating the bus, a student fell down from the bus due to rash and negligent driving of the Workman, which



resulted in the death of the student. It is further case of the Management that a Charge Memo was issued against the Workman and not satisfied with the explanation offered by him, a domestic enquiry was conducted and based on the report of the Enquiry Officer, the Management passed an order dated 10.04.2014, postponing the increments of two years with cumulative effect. It is also the case of the Management that challenging the order dated 10.04.2014, Union raised an Industrial Dispute before the Labour Court on behalf of the Workman and the Labour Court, vide order dated 04.10.2018, reduced the punishment of postponement of annual increment from two years to one year with cumulative effect and the said order is under challenge in the present petition.

2.1. It is represented by the Management that the parents of the deceased student had filed O.P.No.2959 of 2012, before the Motor Accident Claims Tribunal, in which the Tribunal directed the Management to pay a sum of Rs.7,50,000/- with 7.5% interest per annum.

3. The contention of the Respondent-Union is that the Labour Court on finding that though the petitioner has conducted a fair enquiry and found that there was only 20% negligence on the part of the respondent/driver, has imposed the punishment of postponement of two increments with cumulative effect, which is absolutely unconscionable, has rightly modified the same to that of postponement of annual increment without cumulative effect and therefore the same does not warrant interference.

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

5. It is seen that the charges in the departmental enquiry were duly established, pursuant to which, the Management imposed the punishment of stoppage of increment for two years with cumulative effect. Admittedly, the Workman had caused a fatal accident, causing death of a student. Only in an Industrial Dispute raised under Section 2(A) of the Industrial Disputes Act, 1947 by an individual or Union, it is at the wisdom of the Labour Court to impose a fresh punishment, after analyzing the documents and evidence on record, as it has got ample powers under Section 11(A) of the I.D.Act, 1947 to do so, not in a dispute raised Under Section 2(k) of the Industrial Dispute Act, 1947 with regard to other punishment, not falling Under Section 2(A) of the Industrial Dispute Act, 1947.

6. In the present case on hand, even though the Workman is said to have been acquitted in the criminal case, in the departmental enquiry, charges have been duly proved and the punishment of postponement of two years increment with



cumulative effect has been imposed. Once the charges in the domestic enquiry have been proved, the Tribunal or Labour Court has no power to modify punishment imposed by the Employer. When the Labour Court has no power to impose a different punishment by invoking Section 11A of the Industrial Dispute Act, 1947, for modify the punishment of the present nature and the charges in the departmental enquiry were held to be intact, there is perversity in the order of the Labour Court. The Labour Court ought not to have modified the punishment of post poning the increments of two years with cumulative effect imposed by the Management and hence, the order passed by the Labour Court is liable to be set aside.

7. In the result, this Writ Petition is allowed and the order passed by the Labour Court dated 04.10.2018 is hereby set aside. The Management is entitled to redo the entire exercise and recover the amount paid in excess, if any made, pursuant to the modification of the award. Till the amount paid in excess is recovered, the employee need not be paid gratuity, as the employee is empower to recover the amount from gratuity in view of the decision of the Honourable Supreme Court in the case of Steel Authority of India Ltd., Vs. Raghbendra Singh and others reported in 2020 SCC OnLine SCC 063. Though the Apex Court appears to have rendered the decision on a different context, the principle laid down is that the recovery is permissible from gratuity when the amount is due to the employer by the employee. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

The I Additional Labour Court,
Chennai.

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.29793

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.29807

W.P.No.15814 of 2019

SSV(CO)
RVM(23/11/2021)