



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

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W.P. (MD) No.11845 of 2010 and 7563 of 2011
and M.P.Nos.1 to 3 of 2010
(Through Video Conferencing)

The Management
Tamilnadu State Transport Corporation Ltd.,
Virudhunagar
Rep. through its
the General Manager,
Virudhunagar.

... Petitioner in
W.P. (MD) No.11845/2010

R.Sankaranarayanan

... Petitioner in
W.P. (MD) No.7563/2011

Vs.

R.Sankaranarayanan

...1st Respondent in WP(MD).
11845/2010

The Presiding Officer,
Labour Court, Madurai.

...2nd Respondent in WP.(MD)
11845/2010 1st Respondent in
WP. (MD).7563/2011

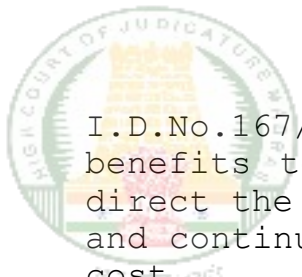
The Management of Tamilnadu State
Transport Corporation (Madurai) Division - V, Ltd.,
Virudhunagar, now changed as
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Virudhunagar Region,
Rep. by its Managing Director,
Virudhunagar

...2nd Respondent in WP.(MD)
7563/2011

(Cause title amended vide order dated 21.11.2017 MP.(MD).1 of 2011

PRAYER in W.P. (MD) No.11845/2010: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the 2nd respondent in I.D.No.167 of 2001 and quash the same as illegal.

PRAYER in W.P. (MD) No.7563/2011: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent Labour Court relating to the impugned award dated 24.08.2009 in



I.D.No.167/01 insofar as denying back wages and other attendant benefits to the petitioner and quash the same and consequently to direct the 2nd respondent to reinstate him in service with back wages and continuity of service and all other attendant benefits and award cost.

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W.P. (MD) No.7563/2011

For Petitioner :Mr.S.Arunachalam

For Respondents :Mr.S.Senthil Kumaraiah for R2

W.P. (MD) No.11845/2010

For Petitioner :Mr.J.Senthil Kumaraiah

For Respondents :Mr.S.Arunachalam for R1

COMMON ORDER

W.P.(MD) No.11845/2010 has been filed by the Management of the transport Corporation challenging the award passed in I.D.No.167 of 2001.

2.W.P.(MD) No.7563/2011 has been filed by the workman challenging the award of the labour Court dated 24.08.2009 insofar denying back wages and other attendant benefits and consequently to direct the Transport Corporation to reinstate the petitioner in service with backwages and all other attendant benefits.

3.Since both the writ petitions are arising out of the same award in I.D.No.167/2001 and the parties are same in both the writ petitions, they were heard together and disposed of by this common order.

4. The petitioner in W.P.(MD) No.11845/2010 is the Management Corporation, hereinafter referred to as 'Management' and the petitioner in W.P.(MD) No.7563/2011 is the employee hereinafter referred to as 'workman' for brevity.

5. The facts of the case in nutshell is that while the workman was working as a permanent Driver in the second respondent Corporation from the year 1993, on 13.02.1998, at about 7.25 p.m., the bus bearing registration No.TN 59 N 0851, which was running between Tenkasi and Aruppukottai, was driven by the workman. At that time, when the bus reached near Muppanoorani, due to the negligent driving of the workman, the bus hit a cyclist and as a result of which, both the cyclist and the pillion rider died on the spot. Pursuant to the said accident, a case has been registered against the workman in Crime No.84/1998 under Section 304(A) IPC. After trial, the case was ended in acquittal. Thereafter, for the very same incident, a disciplinary proceedings was initiated against the workman by the Management and after following the principles of natural justice, the Enquiry Officer drawn a proven charge and the workman was dismissed from service on 06.03.2000. As against the said dismissal order, the workman raised an industrial dispute in ID



No.167/2001.

5.1. On hearing both sides, the labour Court passed an award on 24.08.2009 whereby the Management Corporation was directed to reinstate the workman, however, denied the back wages. Challenging the award passed, the workman and the Management Corporation is before this Court with these writ petitions.

6. Before the labour Court, on behalf of the Management Corporation, no witness was examined, however, they exhibited Exs.P.1 to 15. On the side of the workman, neither a witness was examined nor a document has been exhibited. After hearing both sides, the labour Court passed an award in favour of the workman thereby reinstating him in service, however without back wages and other attendant benefits.

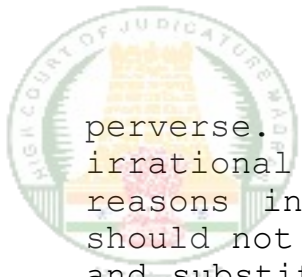
7. The learned counsel for the Management submitted that though the acquittal of the criminal case will not bind the Transport Corporation, in the disciplinary proceedings, the Management Corporation has proved the case beyond all reasonable doubt.

8. However, the learned counsel for the workman would submit that in the present case, the Management Corporation did not examine any witness and the Management Corporation claimed that there was a Conductor and passengers, who stood as eye witnesses. However, neither the Conductor nor the passengers were examined to prove the guilt against the workman. In the absence of oral evidence and based on the documents, the Enquiry Officer concluded and drawn the proven charge, which is not sustainable in the eye of law.

9. At this juncture, the learned counsel for the Management Corporation would submit that during the pendency of the writ petition, the workman was reinstated in service without prejudice to the rights of the Corporation in these petitions. However, though the Management Corporation has marked the documents, the said documents clearly establish the guilt committed by the workman and hence, he prayed for dismissal of the prayer sought for by the workman.

10. I have heard the learned counsel for the workman and the learned counsel for the Management and perused the materials available on record.

11. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ Court should not interfere with the award of the Labour Court, unless the award is



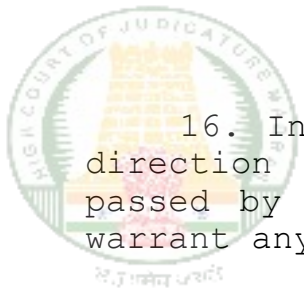
perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award. First, it has to be seen, whether the Management was able to exactly establish as to the guilt committed by workman and whether there was evidence to show that the workman concerned is solely responsible for the guilt and the same is affected the reputation of the Management.

12. It is seen from the award of the labour Court that the facts are not disputed. Admittedly, the workman entered into service in the year 1993. He was in service in the year 1998. It is an admitted fact that the workman is a Driver. The charge against him is that on 13.02.1998, when the town bus, which was driven by the workman, was plying between Tenkasi and Arupukottai, the workman hit the cyclist coming in the opposite direction, in which, not only the cyclist, but the pillion rider lost their life.

13. In order to substantiate the charges levelled against the workman, the Management has not even examined any witness to prove the same. Apart from that, neither the Conductor nor the Passengers of the bus was examined to prove the guilt. The non examination of the Conductor before the labour Court, which is very crucial for establishing the case against the workman, is fatal to the enquiry proceedings. Though documents were marked on the side of the Management Corporation, no witness has been examined before the labour Court. For these reasons, the labour Court was right in accepting the case of the workman and accordingly, passed an award in favour of the workman, which needs no interference at the hands of this Court.

14. Since the law is well settled in this regard that no one can be punished without giving a full opportunity of being heard by way of departmental enquiry to arrive at a conclusion based on the proposition of preponderance of probabilities, such workman cannot be punished, whether it is a minor or major punishment. Here, in this case, admittedly, without giving such an opportunity to the workman, the punishment was imposed and hence, he would submit that the labour Court has rightly passed the award in favour of the workman, which cannot be interfered with.

15. Furthermore, the Hon'ble Supreme Court in a catena of decisions held that for non employment period, the workman/employee is not entitled to any backwages/monetary benefits.



16. In such view of the matter, I am not inclined to issue any direction to the Management to pay the back wages and the award passed by the labour Court is perfectly justifiable and does not warrant any interference by this Court.

17. In the result, the writ petitions fail and the same are dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RTI)

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/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer,
Labour Court,
Madurai.

W.P. (MD)Nos.11845 of 2010 and 7563 of 2011
and M.P.Nos.1 to 3 of 2010
05.01.2021

NA (CO)

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