



WEB COPY

W.A.(MD)No.378 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A. (MD) No.378 of 2011

G.Gomathi

.. Appellant/2nd Respondent

Vs.

1.The Management,
Rep. by the Managing Director,
Tamil Nadu State Transport Corporation (Madurai Division-I) Ltd.,
Now Known as
(Tamil Nadu State Transport Corporation(Madurai)Ltd.,),
By-pass Road,
Madurai-10.

.. 1st Respondent / Petitioner

2.The Presiding Officer,
Labour Court,
Madurai.

.. 2nd Respondent/1st Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent Act, against the order dated 02.02.2011, allowing the W.P.(MD) No.10407 of 2005 filed by the 1st respondent against the impugned award of the 2nd respondent dated 28.10.2004 passed in I.D.No.64/95 directing the 1st respondent to pay the terminal benefits to the appellant, the wife and the legal heir of the deceased employed who filed the I.D.No.64/95 against the dismissal of his services by the 1st respondent.

Prayer in WP(MD). 10407/ 2005 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records of the 1st respondent in his proceedings in I.d.No. 64/95 dated 28/10/2004 and quash the same and pass such further or other orders as my deemed fit.

For Appellant : Mr.S.Arunachalam
For R1 : Mr.M.Prakash
Respondent No.2 : Labour Court

<https://hcservices.ecourts.gov.in/hcservices/>



JUDGMENT

S.VAIDYANATHAN, J.

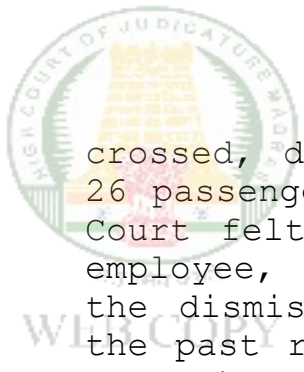
and

DR.G.JAYACHANDRAN, J.

The appeal is directed against the order dated 02.02.2011, passed in W.P(MD)No.10407 of 2005 whereby the award of the Labour Court in I.D.No.64 of 1995 dated 28.10.2004 was interfered by the learned Single Judge and the punishment of simple discharge was converted into one of dismissal from service is questioned in the present appeal.

2. The employee was working in the Transport corporation as a driver and pursuant to the charge memo dated 24.12.1992, he was suspended and thereafter dismissed from service with effect from 26.11.1994. The employee questioned the dismissal, which was taken up after conciliation by the Labour Court, Madurai, in I.D.No.64 of 1995. During the pendency of the industrial dispute, the employee died on 18.06.1995 and the legalheirs got substituted vide order dated 23.06.1997 in I.A.No.273 of 1996 before the Labour Court. The Labour Court, after taking into account the evidence let in by the parties, came to the conclusion that the employee has committed a serious misconduct and the act of the driver, namely, deceased driven the bus in a rash and negligent manner and caused accident deserves to be dismissed from service. After the second show cause notice, on getting comments on the enquiry report, the order of dismissal was imposed. The Labour Court came to the conclusion that the punishment for a driver, who has rendered 12 years of service is harsh and interfered with the punishment and convert the dismissal with effect from 11.11.1994 to one of simple discharge and directed the management to pay the terminal benefits to the legalheirs of the deceased employee with backwages from 11.11.1994 to 18.06.1995. The Labour Court was also held that the question of reinstatement was not arise as the employee is no more. The learned Single Judge going through the records, came to the conclusion that the employee has committed serious misconduct and that the Labour Court ought not to have imposed a lesser punishment and restored the punishment of dismissal of service as imposed by the employer.

3. Before this Court, Management has raised two issues. Firstly, the past conduct of the employee is very bad and hence the dismissal from service. Secondly, the employee had driven the vehicle in a rash and negligent manner, while a cyclist suddenly



crossed, dashed against the tamarind tree and caused injuries to 26 passengers out of 27 passengers and one died. Since the Labour Court felt that it was an accident not due to the fault of the employee, imposed the punishment of simple discharge converting the dismissal from service. But yet another submission was that the past record of the employee was bad, the management drew the attention of the Court to the past record numbering 5 imposed to the employee prior to the accident.

4. When this Court posed a question as to whether these punishments were imposed after conducting enquiry, he submitted that punishments were imposed and no enquiry was conducted. Taking note of the submissions, we are of the view that the Labour Court under Section 11(A) of the Industrial Disputes Act has got ample powers to interfere with the punishment. During the course of argument the learned counsel for the workman submitted that they are willing to give up backwages awarded by the Labour Court from 11.11.1994 to 18.06.1995. As there is no enquiry preceded before imposing the punishment with regard to the past misconduct, and in the light of the judgment reported in 1987 (2) LLJ 491, past punishments cannot be treated as past record at all. Eventhough the charges have been proved in the present misconduct, the Labour Court has got ample powers to interfere under Section 11(A) of the Industrial Disputes Act, 1947. Unless perversity is shown, this Court cannot exercise the extra ordinary jurisdiction of this Court to interfere with the punishment or modify the punishment imposed by the Labour Court. The learned Single Judge, while interfering with the order of the Labour Court, has applied the principles of *res ipso loquitur* to draw adverse inference against the driver for his rash and negligence driving. Infact, it is not a plea taken by the management either in the domestic enquiry or before the Labour Court.

5. We are of the view that on this ground the learned Single Judge has exceeded the power of the judicial review over the award of the Labour Court. For the said reason, the order of the learned Single Judge dated 02.02.2011 passed in W.P(MD)No.10407 of 2005 is set aside and the award of the Labour Court, dated 28.10.2004 in I.D.No.64 of 1995 is restored with the following direction:

"The legal heirs of the deceased employee are entitled to all the monetary benefits due to the employee from the date on which he entered into service till the date of death. However, the employee will not be entitled to back wages from 11.11.1994 to 18.06.1995. The retiral benefits shall be given by the employer due to the employee, to the eligible legal heirs of the employee. All the monetary benefits due including the terminal



benefits shall be disbursed within a period of four months from the date of receipt of a copy of this order. The pensionary benefits shall be extended as per the Rules applicable on the date of demise of the employee."

WEB COPY

6. With the above direction, this writ appeal is allowed. No Costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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.

+1 CC to M/s.M. PRAKASH, Advocate (SR-35899[F] dated 25/11/2021)

W.A. (MD) No.378 of 2011
25.11.2021

TSK(CO)
SB(22.12.2021) 4P 3C