



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)Nos.11862 and 6441 of 2011

and

M.P. (MD) .No.1 of 2011 in W.P. (MD) .No.6441 of 2011

WEB COPY

W.P (MD) No.11862 of 2011:

S.Sivam(died)

1.S.Manikumar

2.S.Gunasundari

.. Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Management of
Tamil Nadu State Transport Corporation
(Madurai Division-I) Ltd,
now renamed
Tamil Nadu State Transport Corporation (Madurai) Ltd,
Madurai Region,
represented by its Managing Director,
Bye-pass Road,
Madurai.

... Respondents

[Petitioners 1 & 2 are impleaded as
Legalheirs of the deceased sole
petitioner vide order dated 08.01.2021
in W.M.P. (MD) .No.10233/2017]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus to call for the records from the 1st respondent Labour Court relating to the impugned award dated 28.07.2010 in I.D.No.166 of 1994 of the 1st respondent insofar as denying the back wages to the petitioner, quash the same and consequently, direct the 2nd respondent to reinstate the petitioner in service with back wages and continuity of service and all other attendant benefits.

For Petitioners

: Mr.S.Arunachalam

Respondent No.1

: Labour Court

For Respondent No.2

: Mr.S.C.Herold Singh



W.P (MD) No.6441 of 2011:

The Management
Tamilnadu State Transport Corporation
(Madurai Division-1) Limited,
Bye-pass Road,
Madurai-16.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Madurai District.

2.S.Sivam, Driver (died)

3. S.Manikumar

4. S.Gunasundari

... Respondents

[Respondents 3 & 4 are impleaded as
Legalheirs of the deceased 1st
Respondent vide order dated 08.01.2021
in M.P. (MD) .No.10234/2017]

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorari and thereby, call for the records pertaining to the order passed by the 1st respondent/Labour Court, Madurai District pertaining to its proceedings in I.D.No.166 of 1994, dated 28.07.2010 and quash the same.

For Petitioner : Mr.S.C.Herold singh

For Respondent No.1 : Labour Court

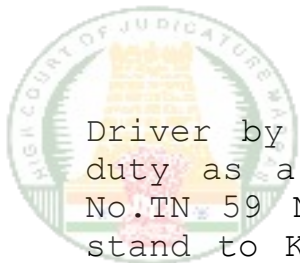
Respondent Nos. 3 & 4 : Mr.S.Arunachalam
R2 : died

COMMON ORDER

The petitioner in W.P(MD)No.6441 of 2011 is the State Transport Corporation, hereinafter will be referred to as 'Employer' and the petitioner in W.P(MD)No.11862 of 2011 is the worker of the State Transport Corporation, hereinafter will be referred to as 'Employee'.

2. Since both these writ petitions are interconnected and are arising out of the Industrial Dispute raised by the Employee in I.D.No.166 of 1994 before the Labour Court, Madurai, these writ petitions are heard together and disposed of by way of this common order.

3. The case of the Employee is that he was appointed as



Driver by the Employer Corporation. The Employee was discharging duty as a Driver on 27.08.1992 in the bus bearing Registration No.TN 59 N 0320, which was operated between Madurai Periyar Bus stand to Kariyapatti, while the bus was proceeding near Manthiri Odai, the Employee has driven the bus in a rash and negligent manner and dashed against the tree in order to avoid to hit a person, who was working in the works in connection with the construction of a bridge. Due to the accident, the bus was fully damaged and in order to escape from the said act of negligence, the Employee make statement that the accident caused due to the break failure. For the above lapses, the Employee was issued with a charge memo dated 01.09.1992 and he was placed under suspension with effect from 04.09.1992 and without prejudice to the pending enquiry of disciplinary action, the order of suspension was revoked with effect from 20.09.1992. The Employee submitted his explanation on 23.09.1992. Since the explanation offered by the Employee was unsatisfactory, domestic enquiry was ordered and in the domestic enquiry it was found the charge levelled against the Employee was proved and the Enquiry Officer drawn the proven minute on 16.08.1993. Subsequently, the Disciplinary Authority arrived a conclusion that the previous delinquencies was not satisfied and the Employee committed several accidents, and hence, the Employee was issued with a second show cause notice on 01.12.1993 along with a copy of the enquiry report, for which the Employee also submitted his explanation on 20.12.1993 and as the explanation was not satisfactory, the same was rejected and it was concluded that the charge framed against the Employee was proved and based on the enquiry report the Employee was dismissed from service on 01.02.1994.

4. As against the order of dismissal from service, the Employee raised an Industrial Dispute in I.D.No.166 of 1994 before the Labour Court, Madurai and the dispute was tried independently and oral and documentary evidence were placed by the Employer as well as the Employee.

5. Before the Labour Court, on the side of the Employee Ex.W1 to Ex.W6 were marked and on the side of the Employer Ex.M1 to Ex.M13 were marked. There was no oral evidence adduced on both side.

6. After analysing the documentary evidence adduced on both side, the Labour Court held that the charges levelled against the Employee was not proved and therefore, the Labour Court passed an award of reinstatement with continuity of service, but without back wages.

7. As against the reinstatement ordered by the Labour Court, the State Transport Corporation Employer has filed the writ



petition in W.P(MD)No.6441 of 2011 and as against the denial of back wages by the Labour Court, the Employee has filed the writ petition in W.P(MD)No.11862 of 2011.

8.The learned Counsel appearing for the Employee would contend that the Labour Court, based on the documentary evidence ie., Ex.M.1 arrived at a mechanical conclusion that the break oil tube was cut and also based on the break down report of the bus, which was marked as Ex.M.2. The Labour Court also considered the statements of the Employee/driver and conductor and held that the Employee alone was not responsible for the accident and it was occurred due to the break failure and further, in order to save a person, who has suddenly cross the road, the bus dashed against the tree standing in the left side of the road, for which there was a minimum damages. Based on the factual findings, the Labour Court has set aside the order of dismissal and therefore, the Labour Court passed an award in favour of the Employee and therefore, the award need not be interfered with.

9. The learned Counsel appearing for the Employee further submitted that the Employee has not involved in any gainful employment in the interregnum period and the management did not establish that the Employee was gainfully employed and in the absence of any evidence to prove that Employee was gainfully employed, denying back wages to the Employee is not sustainable in the eye of law and therefore, the learned Counsel prayed for allowing the writ petition filed by the Employee and thereby ordering for back wages.

10. Per contra, the learned Counsel appearing for the Employer would submit that while the Employee was working as a driver in the Employer Corporation, on 27.08.1992 he has driven the Corporation bus bearing Registration No.TN 59 N 0320 and dashed against the tree standing on the road side and caused damage to the bus and further, for his lapses, he was issued with charge memo and after full-fledged enquiry, the termination order was passed. The learned counsel would further submit that earlier, the Employee faced several punishments for his lapses and by considering his previous conduct and records also, the present charge memo was issued to the Employee. Hence, there is no procedural violation for conducting disciplinary proceedings as against the Employee and based on the proven charges, the Employee was dismissed from service. He would further submit that before the Labour Court, in order to prove the case, Ex.M1 to Ex.M14 were marked on the side of the Employer, but in order to disprove the charges, none of the relevant records are marked by the Employee and the above points were not considered by the Labour Court and therefore, the learned Counsel prayed for allowing the writ petition filed by the State Transport Corporation.



11. Heard the learned Counsel on either side and carefully perused the materials placed on record.

12. 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.

13. Therefore, in the absence of any evidence placed by the Employer Corporation, before the Labour Court to show that this Employee alone is responsible for the loss caused to the State Transport Corporation, the reinstatement with continuity of service ordered by the Labour Court cannot be interfered with and in the absence of the Employee proving by letting in evidence that he had not involved in any gainful employment during the interregnum period, the denial of back wages by the Labour Court also cannot be interfered with.

14. In the light of the above discussion, I am not inclined to interfere with the order of the Labour Court, Madurai passed in I.D.No.166 of 1994, dated 28.07.2010 and therefore, both these writ petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. However, the retirement benefits and other benefits, if any, payable to the deceased Employee as per the award of the Labour Court, shall be paid to the legalheirs of the deceased Employee within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Managing Director,
Tamilnadu State Transport Corporation
(Madurai Division-1) Limited,
Bye-pass Road,
Madurai-16.

W.P (MD) Nos.11862
and 6441 of 2011
08.01.2021

KM (15.02.2021) 6P 3C