



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**
W.P. (MD)Nos.13301 of 2011 and 14799 of 2010
and
M.P(MD) .No.1 of 2011

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W.P(MD)No.13301 of 2011

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division-2) Limited,
Periyamilagu Parai,
Trichirappalli.

... Petitioner

Vs.

1.V.Thangaraj

2.The Presiding Officer,
Labour Court,
Trichirappalli.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the Presiding Officer, Labour Court, Trichirappalli, in I.D.No.166 of 2002 dated 11.03.2010.

For Petitioner	: Mr.M.Prakash
For R1	: Mr.R.Sundar
For R2	: Court

W.P(MD)No.14799 of 2010

V.Thangaraj

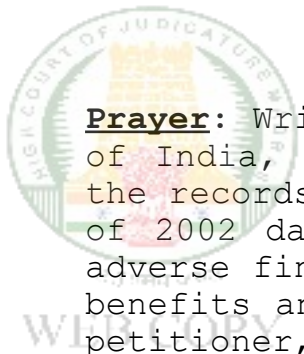
... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division-2) Limited,
Periyamilagu Parai,
Trichirappalli.

2.The Presiding Officer,
Labour Court,
Trichirappalli.

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent relating to its order in I.D.No.166 of 2002 dated 11.03.2010 and quash the portion of order recording adverse findings, denying backwages, continuity in service and other benefits and further directing the respondents herein to pay to the petitioner, the entire backwages, continuity in service and other benefits from the order of dismissal dated 07.12.2001.

For Petitioner : Mr.R.Sundar
For R1 : Mr.P.Balasubramanian
Standing Counsel
For R2 : Court

COMMON ORDER

The Writ Petition in W.P(MD)No.13301 of 2011 has been filed praying for issuance of a Writ of Certiorari to call for the records pertaining to the order passed by the Presiding Officer, Labour Court, Trichirappalli, in I.D.No.166 of 2002 dated 11.03.2010.

2. The Writ Petition in W.P.(MD)No.14799 of 2010, has been filed praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent relating to its order in I.D.No.166 of 2002 dated 11.03.2010 and quash a portion of order, recording adverse findings, denying back-wages, continuity in service and other benefits and further directing the respondents herein to pay to the petitioner, the entire back-wages, continuity in service and other benefits from the order of dismissal dated 07.12.2001.

3.Since the issue involved in both the Writ Petitions are one and the same, they are taken up together for hearing and being decided by this common order.

4. The petitioner in W.P(MD)No.13301 of 2011 is referred as employer. The petitioner in W.P(MD)No.14799 of 2010 is referred as employee.

5.The case of the employee is that the employee viz., Thangaraj, was employed as a Driver in the Tamil Nadu State Transport Corporation(Kumbakonam) Ltd., in the year 1987. While the employee was working as a Driver in the bus bearing Registration No. TN45-N-1347 on 03.07.2001, he drove the bus in a rash and negligent manner and thereby, the bus capsized, wherein, two persons died on the spot and 79 persons were injured. Therefore, the employee was suspended and enquiry was conducted and after giving an opportunity, the enquiry officer submitted his report holding the charges proved against him. Based on the report of the enquiry officer, the employee was dismissed from service on 07.12.2001.



6. Against the said dismissal, the employee has raised an industrial dispute before the Labour Court, to set aside the order of dismissal passed by the Transport Corporation. The Labour Court has set aside the dismissal order and directed the Transport Corporation to accept the employee as fresh entrant, without any backwages. Challenging the same, the employer has filed the writ petition in W.P(MD)No.13301 of 2011.

7. The learned counsel appearing for the employer submitted that prior to the impugned order of dismissal, the employee was punished 12 times and due to rash and negligent driving of the employee, the bus capsized due to which, 79 persons were injured and two persons died. The learned counsel for the petitioner further submitted that the employee entered into service in the year 1997, within two weeks, he committed a major accident thereby one person lost his life and again after 12 years, he committed the accident, in which, two persons died and 79 persons were injured. However, 113 MCOP cases were filed against the Corporation, for which, the Corporation paid 55 laksh, as compensation. On the aforesaid ground, the punishment was imposed against the petitioner, which cannot be interfered with. Hence, he prays for allowing the writ petition.

8. Per contra, the learned counsel appearing for the employee submitted that the employee entered into service in the year 1987 and the said accident happened in the year 2001 and prior to that, the employee received 4 awards and he rendered more than 14 years of service. The said accident happened only due to mechanical defects. Hence, the Corporation shifting the burden on the worker is unsustainable. Further, the learned counsel for the petitioner submitted that the Labour Court without considering the past service rendered by the employee, mechanically passed the award to consider the employee as a fresh entrant is wholly unsustainable. Hence, he prays for dismissal of the writ petition.

9. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

10. 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 draw its own conclusions, merely because this Court is of

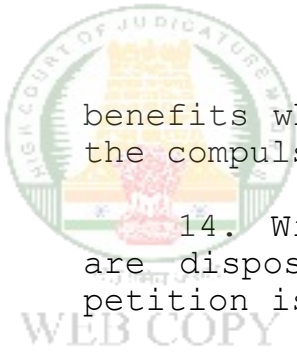


the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

11. The facts in the present case are not in dispute. Admittedly, the employee has entered into service in the year 1987 as a Driver. During his service, he was punished 12 times and the said punishment orders were not marked before the Labour Court. The employee was punished 12 times for his bad activities and therefore, major punishment was imposed on the ground that the accident had occurred due to the rash and negligent driving of the bus resulting in the loss of lives of two persons and injury to 79 persons. It is the admitted case of the parties that the bus capsized, when it was being operated in a billy terrain. It is to be borne in mind that operating the bus in a hilly terrain is not akin to driving the bus on plains. Even with due diligent care and caution, many a times accidents occur even in plains and considering the fact that the bus was operated in a hilly terrain, definitely the petitioner has to be given a reasonable leeway, as it is a known fact that driving in hilly area is an arduous task. May be the employee was punished 12 times in his employment stint with the Transport Corporation, but it is not the case of the Transport Corporation that each and every time, the delinquency committed by the employee was in equivalence to the delinquency in the present case. Without there being materials to show that the employee had committed similar delinquency, shifting the full burden on the shoulders of the employee to deny him the benefit of his long service with the Transport Corporation would be fairly unjust and unreasonable and, therefore, imposition of a major penalty, which affects his long service with the Corporation cannot be allowed to stand.

12. However, it should not be lost sight of that the employee a habitual delinquent and had committed delinquencies for which punishments have been given to him. In such a backdrop, allowing the employee to continue in service with sour taste in both the mouth of the employee and the employer would be detrimental to the organisation and also the commuters, more so when the employee is a driver. Such being the case, this Court is of the considered view that the punishment of dismissal from service is highly disproportionate, for the reasons aforesaid. Hence, the punishment imposed by the Transport Corporation which has been modified by the Labour Court is set aside in its entirety and instead the employee is imposed with a punishment of compulsory retirement. The employee is entitled for service benefits from the date of his appointment in service till the date of compulsory retirement, viz., the date on which he was dismissed from service by the employer.

13. It appears that the employer has paid 17(b) wages during the period the employee was under suspension. The Transport Corporation is directed to calculate and pay the balance of all the



benefits which enures to the benefit of the employee as a result of the compulsory retirement imposed by this Court.

14. With the aforesaid modification, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division-2) Limited,
Periyamilagu Parai,
Trichirappalli.

2.The Presiding Officer,
Labour Court,
Trichirappalli.

+1CC to Mr.P.Balasubramanian,Advocate, Sr.No.7033 dated 24.02.2021

W.P. (MD)Nos.13301 of 2011 and 14799 of 2010
and
M.P (MD) .No.1 of 2011
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KB(23.06.2021) 5P 4C