



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD) No.13754 of 2011

and

M.P. (MD) .No.1 of 2011

WEB COPY

The Management,
Tamilnadu State Transport Corporation,
(Madurai Ltd.),
Bye pass Road,
Madurai.

.. Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.P.Natchiyappan

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in I.D.No.22/2001 dated 04.10.2010 on the file of the Labour Court, Madurai and quash the same.

For Petitioner : Mr.J.Senthil Kumaraiah
Respondent No.1 : Labour Court
For Respondent No.2 : No appearance

ORDER

This petition has been filed for the issue of a writ of certiorari, to quash the order passed in I.D.No.22/2001 dated 04.10.2010 on the file of the Labour Court, Madurai.

2. The petitioner is the State Transport Corporation, hereinafter will be referred to as 'Employer' and the second respondent is the worker of the State Transport Corporation, hereinafter will be referred to as 'Employee'.

3. The case of the Employer is that while the Employee was working as Driver under the petitioner Corporation, on 08.05.1999, the Employee has driven the bus bearing Registration No.TN58-No-0011 from Senkottai to Madurai, while the bus nearing



Employee dashed against a tree standing on the right side of the road resulting the death of four persons on the spot and 19 passengers sustained injuries. Immediately, the Employer was placed under suspension pending enquiry with effect from 18.05.1999. A charge memo was issued on 19.05.1999 for which the Employee gave his explanation on 04.06.1999. Since the explanation offered by the Employee was unsatisfactory, domestic enquiry was ordered and in the domestic enquiry, it was found that the charges levelled against the Employee were proved. Subsequently, the Employee was issued with a second show cause notice along with a copy of the enquiry proceedings and findings list for which the Employee also submitted his explanation and as the explanation was not satisfactory the same was rejected and the enquiry officer has drawn proven minute against the Employee and based on the enquiry report, the Employee was dismissed from service on 15.10.1999.

4. As against the order of dismissal from service, the Employee raised an Industrial Dispute in I.D.No.22 of 2001 before the Labour Court, Madurai, for reinstatement with back wages, continuity of service and all other attendant benefits.

5. Before the Labour Court, on both side, no witness was examined. On the side of the Employee, Ex.W1 was marked, whereas the Employer marked Ex.M.1 to Ex.M.12.

6. After analysing the documentary evidence, the Labour Court held that the charges levelled against the Employee were not proved and therefore, the Labour Court passed an award of reinstatement with continuity of service, but without backwages. Challenging the same, the present writ petition has been filed by the Employer.

7. The learned Counsel appearing on behalf of the Employer would submit that admittedly, the Employee has driven the bus in a rash and negligent manner and dashed against the tree standing on the road side, which claimed four lives and caused grievous injuries to 19 persons, which were not disputed and hence the Employee caused huge loss to the Employer. Therefore, a domestic enquiry was conducted and the charges levelled against the Employee were found to be proved and based on the enquiry officer's report, the Employee was removed from service, which is justifiable one. However, the Labour Court, Madurai, without considering these facts, passed the award of reinstatement is not sustainable one. Accordingly, he prayed for allowing this writ petition.

8. Heard the learned Counsel appearing on behalf of the Employer and carefully perused the materials placed on record. Despite serving of notice, no one appeared on behalf of the



Employee. However, considering the pendency of the case from 2011, I am inclined to dispose of the case with available records.

9. 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 Employer Management was able to exactly establish as to the accident was due to the negligence of the Employee and whether there was evidence to show that the Employee is solely responsible for the accident.

10. Admittedly, the Employee worked as a Driver under the Employer Corporation. While he was working, the Employee has driven the bus in a rash and negligent manner and dashed against the tree standing on the road side, which claimed four lives and caused grievous injuries to 19 persons, which were not disputed. At the same time, in order to prove the rash and negligent driving of the Employee, no witnesses were examined before the Enquiry Officer. On perusal of Ex.M7 and Ex.M8, one Rajendran, Senior Assistant was examined and except him, no one was examined. However, such evidence is not sufficient to prove the negligence of the Employee. So, in the absence of any possible evidence, the award of the Labour Court cannot be interfered with. However, it appears that the Employee got superannuation in the year 2016. Moreover, the Employee was joined as Driver in the year 1995 and the charge memo was issued in the year 1999, and he was dismissed from service in the same year, ie., within a period of four years of his appointment. Hardly the Employee worked only four years in the respondent Corporation and he reached the age of superannuation in the year 2016.

11. In the light of the above discussion, this Court is inclined to modify the award of the Labour Court. Considering the facts and circumstances of the case, the order of reinstatement is not possible. However, the Employee is entitled for continuity of service till the date of normal age of superannuation, however, he



is not entitled for any backwages from the date of termination till the date of superannuation. Further, the Employee is entitled for continuation of service for the purpose of getting pensionary benefits. Accordingly, the Employee is directed to settle the terminal benefits and other eligible benefits to the Employer within a period of twelve (12) weeks from the date of receipt of a copy of this order.

12. Accordingly, this Writ Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

// 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.

W.P. (MD) .No.13754 of 2011
10.03.2021

SSS(CO)
TR(26.04.2021) 4P 2C