



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.5130 of 2011

and

M.P. (MD) .No.1 of 2011 and W.M.P (MD)No.1 of 2012

WEB COPY

The Management,
Tamil Nadu State Transport Corporation,
(Madurai Division-2),
Thiruchendur,
Tuticorin District.

... Petitioner

Vs.

1.Sivakumar

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorari, to call for the records pertaining to the order passed by the second respondent in I.D.No.97 of 2004, dated 30.04.2010 and quash the same as illegal.

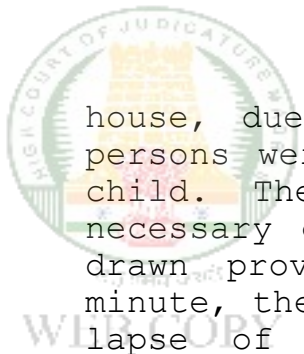
For Petitioner : Mr.M.Prakash
For Respondent No.1 : Mr.D.Srinivasaragavan
Respondent No.2 : Court

ORDER

This writ petition is filed seeking a writ of certiorari, to quash the award dated 30.04.2010 passed in I.D.No.97 of 2004 on the file of the Labour Court, Tirunelveli.

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

3. The case of the Employer is that the Employee was appointed by the Employer as Driver on daily wages basis and he was not a permanent employee and has not completing 240 days continuous service. At this juncture, on 01.09.1998, the Employee has driven the bus bearing Registration No.TN72-N 0462 from Kulasekarapattinam to Manappadu. While the bus nearing Kottuvappalli, due to the rash and negligent driving, the Employee dashed against the cyclist, who came from the opposite direction and also hit against the roadside



house, due to which two persons succumbed to injuries and three persons were sustained grievous injuries including three years old child. Thereafter, a Domestic Enquiry was conducted after affording necessary opportunity to the Employee and the enquiry officer has drawn proven minute against the Employee. Based on the proven minute, the Employee was dismissed from service on 08.01.1999. After lapse of five years, the Employee initiated the conciliation proceedings on 27.01.2004 before the Labour Officer, Tuticorin, and the Labour Officer filed a failure report on 27.01.2004 vide his proceedings in Na.Ka.No.197/2004. Hence, the Employee raised the Industrial Dispute under 2A(2) of the Industrial Dispute Act, 1947, in I.D.No.97 of 2004 before the Labour Court, Tirunelveli.

3.1. Before the Labour Court, on his side, the Employee did not examine any witnesses, however, marked Ex.P1 to Ex.P8, whereas the Employer examined two witnesses and marked Ex.M.W.1 to Ex.M.W.30.

3.2. Based on the oral and documentary evidence, the Labour Court passed the award of reinstatement of service along with 50% of backwages. Challenging the same, the present writ petition has been filed by the Employer.

4. The learned Standing Counsel appearing on behalf of the Employer would submit that the Employee was appointed as a temporary employee and before completing 240 days of continuous service, the Employee has driven the bus in a rash and negligent manner and dashed against the cyclist, who came from the opposite direction and hit the roadside house which claimed two lives and caused grievous injuries to three persons. 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. However, the Employee did not take any steps either before the conciliation officer or before the Labour Court to raise the Industrial dispute for a period of five years. However, after lapse of five years, he raised industrial dispute in I.D.No.97 of 2004 before the Labour Court, Tirunelveli. However, the Employee has no right to claim reinstatement as a matter of right since he is a daily wage employee and before completing 240 days of continuous service, he committed the offence. Hence, the order of the Tribunal is contrary to the evidence let in by the Employer. Further, the learned counsel appearing on behalf of the Employer would submit that the Employee being a driver and without having sufficient driving skills has caused the accident and if this court sustains the tribunal order by ordering reinstatement of the Employee, it will endanger the general public and their safety. Accordingly, he prayed for allowing this writ petition.

5. Per contra, the learned counsel appearing on behalf of the Employee would submit that though the Employee did not examine any witnesses, he marked eight documents and the crucial document is the

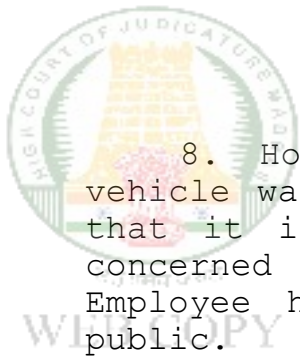
<https://www.mca.gov.in/>



order of acquittal by the Criminal Court, wherein, the Criminal Court clearly held that the Employee is not responsible for the accident. Further, the learned counsel for the Employee would submit that the improper maintenance of the bus lead to the accident. Hence, fixing the responsibility on the Employee is not at all fair and on that reason, the Labour Court passed the award in favour of the Employee which need not be interfered with.

6. 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.

7. Considering the facts and circumstances, admittedly, the Employee entered into service as Driver on daily wage basis and he has driven the bus on 01.01.1998 bearing Registration No.TN72-N 0462 from Kulasekarapattinam to Manappadu. While the bus nearing Kottuvappalli, it is alleged that the Employee in a rash and negligent manner driven the bus and dashed against the cyclist, who came from the opposite direction and hit a roadside house, due to which two lives were lost and three persons were injured and for that accident the law enforcing agency filed a criminal case against the Employee and filed charge sheet and after trial, the case was ended in acquittal. However, merely the acquittal will not wipe up the negligent committed by the Employee and proof required for the criminal case is beyond reasonable doubt, whereas in the Departmental Proceedings, the standard of proof is preponderance of probability. Further, the nature of the job of the Employee is driver and before completing one year period, he committed a road accident, due to which two lives were lost in the course of his job. Perusal of the Labour Court award reveals that the Employer witness deposed that before the accident, a big noise was heard in the bus and break equipment was not functioning properly and thereby, the vehicle was turned right side and the accident had occurred. According to the Employer, had the bus been properly maintained, the accident would not have occurred. The Labour Court has not considered the nature of job of the employee properly, and if the Labour Court award is sustained, there may not be guarantee to the general public that any untoward incident cannot happened in



8. However, this Court considered the contention that the vehicle was not properly maintained is unacceptable for the reason that it is for the driver to take it to the knowledge of the concerned authorities and without repairing the defects, the Employee had driven the vehicle and dashed against the general public.

9. Further the dismissal order was passed in the year 1999 however, the Employee did not take any steps to raise an industrial dispute either before the Labour officer or before the Labour Court within the reasonable time. Only after five years, that too in the year 2004, the Industrial Dispute was raised before the Labour Court and in the opinion of this Court, the issue was not properly considered by the Labour Court.

10. In the light of the above discussion, this Court is inclined to interfere with the award of the Labour Court and accordingly, this Writ Petition is allowed and the award of the Labour Court passed in I.D.No.97 of 2004, dated 30.04.2010 is set aside. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// 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
The Presiding Officer,
Labour Court,
Tirunelveli.

+1 CC to Mr.M.PRAKASH, Advocate (SR-743[F] dated 11/01/2021)

+1 CC to Mr.D.SRINIVSA RAGAVAN, Advocate (SR-759[F] dated 11/01/2021)

W.P (MD)No.5130 of 2011

08.01.2021

KV(09.02.2021) 4P 4C

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