



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.8827 of 2021

and

W.M.P(MD)No.6641 of 2021

WEB COPY

The Management,
Tamil Nadu State Transport Corporation
(Tirunelveli) Limited,
19, Thiruvananthapuram Road,
Vannarpettai,
Tirunelveli District.

... Petitioner

Vs.

General Secretary,
Nellai District Transport Employees Union (CITU),
In front of the head-office of the Tamil Nadu State
Transport Corporation (Tirunelveli) Ltd.,
Vannarpettai,
Tirunelveli-627 003.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the Labour Court, Tirunelveli, dated 31.10.2019, passed in I.D.No.56 of 2017.

For Petitioner : Mr.R.Rajamohan

ORDER

This writ petition is filed challenging the award of the Labour Court, Tirunelveli, dated 31.10.2019, made in I.D.No.56 of 2017. One K.L.Kennedy is working as a driver in the petitioner's Transport Corporation. On 12.08.2012, at 19.30 hours, at Sankarankovil - Tenkasi Road, near Muthusampuram, due to rash and negligent driving by the said driver of the bus, bearing Registration No.TN-58-N-1039, the accident had occurred and one Chinnathai sustained injuries and died on the spot. The petitioner initiated disciplinary proceedings against the said driver after the domestic enquiry, after issuing second show cause notice to the said driver and considering the explanation given by him, imposed a punishment of stoppage of increment for three years with cumulative effect. Aggrieved over the same, the driver filed an appeal to the Managing Director of the petitioner's Corporation. Before the appeal could be considered and decided, the respondent's Union raised an Industrial Dispute on behalf of the driver. The



petitioner filed counter and contested the same. The Labour Court, Tirunelveli, by the award dated 31.10.2019, set aside the punishment imposed by the petitioner's Corporation. Challenging the said award, the petitioner has come out with the present writ petition.

2. The learned counsel appearing for the petitioner contended that the Labour Court held that the enquiry conducted by the petitioner was not fair and just, but did not give an opportunity to the petitioner to let in evidence before the Labour Court afresh to prove the case against the driver. The accident had occurred only due to rash and negligent driving by the driver of the bus. The Labour Court erroneously set aside the punishment imposed by the petitioner. The reason given by the Labour Court is invalid and illegal, when the driver has caused the accident due to his rash and negligent driving. It affects the reputation of petitioner's Corporation. In the Domestic Enquiry strict rule of evidence is not applicable and guilt need not be established beyond reasonable doubt. The proof of misconduct is sufficient. The Motor Accident Claims Tribunal held that the accident occurred due to rash and negligent driving by the driver of the petitioner's Corporation and that finding has become final and prayed for setting aside the award of the Tribunal.

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

4. From the materials on record, it is seen that the petitioner has imposed punishment of stoppage of increment for three years with cumulative effect for misconduct of the driver for causing accident due to rash and negligent driving. In the domestic enquiry, the driver participated. From the award of the Tribunal, it is seen that the petitioner has conducted domestic enquiry in a fair, proper and transparent manner. The contention of the learned counsel for the petitioner that the Labour Court has held that the domestic enquiry was not conducted in a fair and proper manner, is contrary to the impugned award. In the report of the domestic enquiry itself, it is stated that deceased also contributed to the accident. Further, in the claim petition filed by the legal heirs of the deceased person, claiming compensation before the Motor Accident Claims Tribunal for the death of the deceased, the petitioner filed counter statement and contended that the accident did not occur due to negligence of the driver and he was driving the bus carefully and only due to the negligence on the part of the deceased, the accident had occurred. The Labour Court has considered the stand taken by the petitioner before the Motor Accident Claims Tribunal carefully and relying on the two judgments of this Court, in **Tamil Nadu State Transport Corporation (Kumbakonam Division-II) Ltd., Periyamilaguparai, Tiruchirappalli and another vs. P.Karuppusamy** reported in **2008(1) MLJ 694** and the Apex Court Judgment in **Venkatappa alias Moode v. Abdul Jabbar** reported in **(2006) 9 SCC 235**, held that the petitioner has imposed punishment without



appreciating the facts properly and set aside the order passed by the petitioner. In the judgment relied on by the learned counsel appearing for the respondents the Hon'ble Apex Court and this Court have categorically held that the party is bound by the pleadings and cannot be permitted to put forth a new case. It is not in dispute that the petitioner took a stand before the Motor Accident Claims Tribunal that the accident had not occurred due to the rash and negligent act on the part of the driver. Having taken such a stand, it is not open to the petitioner to take directly contradictory stand that only due to the rash and negligent driving by the driver, the accident occurred. The Labour Court has considered all materials placed before it in proper perspective and set aside the order passed by the petitioner. There is no error in the award of the Labour Court, setting aside the punishment imposed by the petitioner.

5. For the above reason, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

+1 CC to M/s.R.RAJMOHAN, Advocate (SR-19322[F] dated 15/06/2021)

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