



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 16.02.2022

DELIVERED ON: 24.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .Nos.10545 of 2012 and 844 of 2014

and

W.M.P. (MD) .Nos.1 of 2012 and 3 of 2012

WEB COPY

W.P. (MD) .No.10545 of 2012

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

... Petitioner

Vs

1.P.Kanagaraj

2.The Presiding Officer,
Labour Court,
Trichirappalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the order passed by the Labour Judge, Trichirappalli, in I.D.No.66 of 2004, dated 20.01.2010 and quash the same as illegal and invalid.

For Petitioner: Mr.M.Prakash
For R-1 : Mr.S.Arunachalam
For R-2 : Labour Court

W.P. (MD) .No.844 of 2014

P.Kanagaraj

... Petitioner

vs

1.The Presiding Officer,
Labour Court, Trichirappalli.

2.The Management of Tamil Nadu
State Transport Corporation (Kumbakonam Division - II) Limited,
Trichy,
Now renamed as
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Trichy Region,
Represented by its Managing Director,
Trichy.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the first respondent Labour Court relating to the impugned award dated 20.01.2010 passed in I.D.No.66/2004 by the first respondent insofar as denying back wages, continuity of service and other benefits to the petitioner, quash the same and consequently to direct the second respondent to reinstate the petitioner in service with back wages and continuity of service and all other attendant benefits and award cost.

For Petitioner: Mr.S.Arunachalam

For R-1 : Labour Court

For R-2 : Mr.M.Prakash

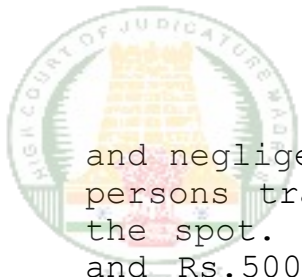
COMMON ORDER

The Writ Petition in W.P.(MD).No.10545 of 2012 was filed by the Management and another Writ Petition in W.P.(MD).No.844 of 2014 was filed by the individual. The Management and the individual had challenged the order passed in I.D.No.66 of 2004.

2. The facts as stated in the Writ Petition W.P.(MD).No.10545 of 2012 filed by the Management is that the first respondent was employed as Driver on 03.07.2001. Because of the rash and negligence driving, the bus dashed against the scooter and three persons died on the spot. The Management suspended the delinquent and an enquiry was conducted and the charges were held to be proved. The delinquent was dismissed from service on 09.11.2000. After the lapse of 3 ½ years, the petitioner filed the I.D. raising a dispute under Section 2(A) of the Industrial Dispute Act. The Tribunal has set aside the dismissal order and granted reinstatement as fresh entrant. The Management aggrieved over the order has filed this Writ Petition and the delinquent aggrieved over the denial of back wages and continuity of service has filed another writ petition.

3. Heard Mr.M.Prakash, learned counsel for the petitioner in W.P.(MD).No.10545 of 2012 and for the second respondent in W.P.(MD).No.844 of 2014 and Mr.S.Arunachalam, learned counsel for the petitioner in W.P.(MD).No.844 of 2014 and for the first respondent in W.P.(MD).No.10545 of 2012.

4. The contention of the Management is that on 26.08.2000, at about 11.05 a.m., the delinquent, when he was working as a Driver was driving the vehicle from Trichy and was proceeding towards Athur. He drove the bus beyond the center line of the road in rash



and negligence manner and caused an accident. In that accident, the persons travelling in the motor cycle were thrown out and died on the spot. There was damage to an extent of Rs.1000/- for the bus and Rs.5000/- for the motor cycle. A charge memo was issued on 02.09.2000 and the delinquent submitted an explanation on 12.09.2000. A domestic enquiry was conducted on 21.09.2000 and 27.09.2000 and the petitioner participated in the enquiry, after opportunity the Enquiry Officer held the charges are proved vide Enquiry Report dated 30.09.2000. The Management after examining the enquiry report and after analyzing the evidence independently came to conclusion that the charges were proved. After considering the past record of the delinquent, where he was found guilty on four occasions, it was decided to impose a punishment of dismissal from service. A second show cause notice dated 12.10.2000 was issued and the delinquent submitted an explanation on 28.10.2000. Thereafter, the delinquent was dismissed on 09.11.2000. The Management is providing a public utility service and owes serious responsibility to provide safe and comfortable service. Therefore, it was decided in the interest of Management not to continue the service of the petitioner.

5. Pending Writ Petition, the delinquent filed 17(b) Petition in M.P.(MD).No.3 of 2012. On 02.12.2013, this Court allowed the petition and the delinquent was receiving the last drawn wages from the date of filing of Writ Petition. The Labour Court has held the delinquent has received awards for his service in the Management Corporation and therefore the delinquent is an efficient driver. Hence the Labour Court had come to the conclusion that the accident was not due to rash and negligence manner and the punishment was set aside and directed the management to reinstate the employee as fresh entrant. As far as the back wages are concerned, the delinquent submitted that the Labour Court has not stated any findings for denying back wages.

6. On perusing the Labour Court award, it is seen that the Labour Court has held the petitioner has served as Driver from 1992 to 2000 without any accident and this seems to be the first accident committed by him. Therefore, this Court is of the considered view the Labour Court is right in coming to the conclusion that the delinquent has served in the Management without any accidents and he deserved to be considered for some relief.

7. The order of dismissal was passed in the year 2000, the I.D., was filed in the year 2004 and there is a delay in preferring the I.D. and hence the employee is not entitled to continuity of service. As on date, the employee would be of 52 years and has still 8 years of service. Therefore, the reinstatement as fresh entrant is also sustainable.



8. The impugned order was passed in the year 2010 and the employee has not worked for all these years. The delinquent is receiving 17(b) wages from the date of filing of the Writ Petition. Therefore, as far as the back wages are concerned, the delinquent has received 17(b) and the Management is directed not to recover the amount. Therefore, delinquent is not entitled to further back wages.

9. With this direction, both the Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

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, Trichirappalli.
- 2.The Managing Director,
The Management of Tamil Nadu
State Transport Corporation (Kumbakonam Division - II) Limited,
Trichy,
Now renamed as
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Trichy Region, Trichy.
- 3.The Section Officer,V.R.Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

Pre-Delivery Order made in

W.P. (MD) .Nos.10545 of 2012 and 844 of 2014

24.03.2022

KG (CO)

TR(04.04.2022) 4P 5C