



W.P.(MD)No.2777 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2022

CORAM

THE HON'BLE MR.JUSTICE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.2777 of 2014

and

M.P.(MD)Nos.1 of 2014 & 1 of 2015

The Management through the General Manager
Tamil Nadu State Transport Corporation,
Madurai Division, Tirunelveli Region,
Tirunelveli.

... Petitioner

Vs.

1. The Presiding Officer,
The Labour Court,
Tirunelveli.

2. R.Sudalaimuthu
3. C.Thanabalakrishnan (Rtd)
4. S.Rajan Babu (Rtd)
5. S.Rathinam
6. C.Mariammal
7. M.Subbulakshmi
8. C.Shanthi
9. K.Saraswathi @ Sudha
10. S.Maharajan

... Respondents

(R5 to R10 are impleaded, vide Court order, dated



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*08.09.2022, in W.M.P.(MD)No.11813 of 2022 in
W.P.(MD)No.2777 of 2014)*

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records from the first respondent Labour Court, Tirunelveli, relating to the Impugned award passed by it in I.D. No.42 of 2008 dated 12.12.2011 in so far as it has ordered to reinstate the second respondent and ordered to continuance his employment and ordered to pay salary and legally payable benefits concerned alone and quash the same.

For Petitioner : Mr.K.Sathya Singh

For R1 : Labour Court

For R2 : Died

For R3 & R4 : No appearance

For R5 to R10 : Mr.K.R. Laxman

ORDER

This Writ Petition is filed by the petitioner Management challenging the award passed in I.D. No.42 of 2008, dated 12.12.2011.

2. The second respondent delinquent died on 20.06.2020 and a



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substitution petition in W.M.P.(MD) No.11813 of 2022 was filed and the same is allowed today i.e. on 08.09.2022. The legal heirs are represented by the same Counsel who appeared for the deceased second respondent. Hence, the case is taken up for hearing today itself.

3. The facts as stated by the second respondent is that he was working as Driver and has raised an Industrial Dispute before the first respondent. The contention of the deceased delinquent is that he had not driven the vehicle in a rash and negligent way and further contended that the victim had crossed the road all of a sudden and has hit the bus. Hence the second respondent has claimed that he was not the reason for the accident.

4. The second respondent further contended that the petitioner Management had framed charges but has served the charges belatedly, moreover the copy of the basic documents were not served and sufficient opportunity was not given to reply the show cause notice, hence there was several procedural lapses while conducting the domestic enquiry.



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The criminal case had ended in acquittal and this fact was not taken into account in the enquiry proceedings. Before the Accident Claim Tribunal, the Management has taken a defence that the driver was not guilty of rash and negligent driving. Now the Management has taken a directly opposite defence that the driver was guilty of rash and negligent driving.

5. The learned Counsel appearing for the legal heirs has also contended that in a similar matter, one R.Sundara Pandian, who was working as a driver involved in the fatal accident. But the petitioner Management has not dismissed the said Sundara Pandian but imposed lesser punishment. Hence the petitioner management is discriminating between the workers and imposing different punishment for same act. The learned Counsel for the second respondent has also contended that the Management has not proved the rash and negligent driving through any eye witness and the punishment of dismissal from service was not warranted.

6. The petitioner Management has filed a counter affidavit



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before the Labour Court, contending that the second respondent was rash and negligent in driving the bus and has caused fatal injury and in the domestic enquiry it was proved by the competent witness. A domestic enquiry was conducted by granting ample opportunity to the second respondent. The second respondent was already involved in twelve accidents and after considering the past service, the punishment of dismissal was awarded. The Labour Court has set aside the punishment and has held since the second respondent has already attained 58 years on 28.02.2009 and has directed the Management to grant continuity of service with backwages and other benefits applicable to the second respondent. Aggrieved over the same, the petitioner Management has preferred this writ petition.

7. Heard Mr.K.Sathya Singh, the learned Counsel appearing for the petitioner management and Mr. K.R.Laxman, appearing for the legal heirs and perused the records.

8. The petitioner Management submitted that after the



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accident, the Assistant Engineer had visited the spot and enquired the eye witness. Thereafter, filed a report saying that the driver had driven the vehicle in a rash and negligent way. The said report has greater probate value as it was spontaneous and simultaneous immediately after the accident. In such circumstances, the Labour Court ought to have accepted the findings of the domestic enquiry.

9. The plea of the second respondent is that the basic documents were not granted for perusing. However, this plea is denied by the petitioner Management stating that though the documents were shown to the second respondent for perusing, the second respondent refused to peruse the documents. Now the second respondent cannot take advantage of his own wrong and cannot raise such plea that basic documents were not served to him. It is seen from the records that the second respondent has not raised such plea before the enquiry officer and hence this Court is of the considered opinion that the such plea before the Labour Court is only after thought and hence such plea cannot be entertained and the same is rejected.



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10. The next plea of the delinquent is that the domestic enquiry was not conducted in free and fair manner and the second respondent was not given sufficient opportunity in the domestic enquiry. On perusal of the Labour Court's order, the Labour Court has not specifically rendered any findings that the domestic enquiry was not conducted in a free and fair manner. The Labour Court has not specifically held that there is procedural irregularity. Moreover, it is seen that the second respondent has not raised such plea before the Labour Court and also before the enquiry officer. In such circumstances, the plea raised by the second respondent that the domestic enquiry is suffering from procedural irregularity cannot be accepted.

11. The next plea of the second respondent is that the second respondent was acquitted in the criminal case, which means that the second respondent has not driven the bus in rash and negligent manner. However, the management submitted that the acquittal in the criminal case does not mean that the second respondent is not guilty of rash and



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negligent driving, since for criminal liability strict evidence is necessary and hence the judgment rendered in criminal case cannot be relied on.

12. The next plea raised by the second respondent is that the petitioner Management had submitted before the Motor Accident Tribunal that the driver has not indulged in rash and negligent driver. However, in the domestic enquiry, the petitioner Management has taken a plea that the second respondent was guilty of rash and negligent driving. Since the petitioner Management has taken the conflicting stand before the Tribunal and before the Labour Court and the same cannot be entertained. On perusal of the records, it is seen that though the petitioner management has taken a stand that the second respondent has not driven in rash and negligent manner, the claim of the petitioner management was rejected and the Tribunal has rendered a finding that the second respondent has caused the death due to his rash and negligent driving. In such circumstances the finding rendered by the Tribunal was relied on and the punishment was imposed. Therefore, there is no infirmity in the stand of the petitioner management. The Learned Counsel for the second



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respondent submitted such conflicting plea cannot be entertained and insisted to resolve the issue, but in the present case since the Tribunal has rendered a finding that the driver is guilty of rash and negligent driving inspite of the management plea that the driver is not guilty of rash and negligent driving. If the Tribunal has held that the driver is not negligent, then there would be a conflicting finding. Hence this Court has left open the issue to be decided in an appropriate case.

13. The petitioner management submitted that as per the Standing Orders, for the act of rash and negligent driving the punishment prescribed is dismissal from service. The second respondent has committed 12 previous accident by rash and negligent driving and he being a habitual rash and negligent driver, the punishment of dismissal is appropriate punishment and the Labour Court ought not to have interfered with the punishment.

14. At this juncture, the learned Counsel for the petitioner and the respondents submitted that the second respondent died on 20.06.2020



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and substitution petition was filed and the same was allowed. The learned Counsel for second respondent submitted that as on date of passing the Labour Court award, the second respondent was already retired from service due to superannuation on 28.02.2009. Hence, the Labour Court has directed to grant only continuity of service and backwages and has declined to grant reinstatement. Hence, the learned Counsel for the second respondent submitted before this Court to confirm the Labour Court award.

15. This Court after considering the rival submissions and on perusal of the documents is of the considered opinion that the second respondent has committed twelve accidents and three were fatal accidents. The plea of the petitioner Management is that the second respondent is a habitual rash and negligent driver is acceptable. However, the second respondent had retired from service in the year 2009 itself, he has subsequently died in the year 2020. Therefore, to meet the ends of justice this Court is inclined to interfere and modify the punishment. Therefore, this Court is of the considered opinion that the



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second respondent is entitled to continuity of service until his retirement
i.e. until 2009 and is entitled to 60% of the backwages only.

16. With this modification, this Writ Petition is disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

08.09.2022

Index : Yes / No
Internet : Yes / No
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To

The Presiding Officer,
The Labour Court,
Tirunelveli.



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S.SRIMATHY, J

jbr

Order made in
W.P.(MD)No.2777 of 2014

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