



W.P.(MD)No.1002 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.1002 of 2016

M.Paulpandian

.. Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Trichy.

2. The Management of
Tamil Nadu State Transport Corporation (Madurai) Limited,
Dindigul Region,
Represented by its General Manager,
Dindigul.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records from the first respondent Labour Court relating to the impugned award dated 28.05.2015 passed by the first respondent in I.D.No.150 of 2004, quash the same and consequently to direct the second respondent to reinstate the petitioner in service with backwages and continuity of service and all other attendant benefits and award cost.



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W.P.(MD)No.1002 of 2016

For Petitioner : Mr.S.Arunachalam
for Mr.RM.Sivakumar

For Respondents : R1 – Labour Court
Mr.J.Senthil Kumariah for R2

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned award passed by the first respondent in I.D.No.150 of 2004, dated 28.05.2015 and consequently direct the second respondent to reinstate the petitioner in service with backwages and continuity of service and all other attendant benefits.

2. The learned counsel for the petitioner submitted that the petitioner was working as a permanent Driver at Palani Branch-II of the second respondent Corporation from 01.05.1996. On 27.10.1999, he was posted to work in the 2nd shift in the bus bearing Registration No.TN-57-N-1005 which was running between Palani and Kaniyur. The said bus was unfit to run in the route, because of its defects. Further, only 20 days before, the bus met with an accident and it was pulled into river due to flood and



W.P.(MD)No.1002 of 2016

WEB COPY

kept therein for two days. Thereafter, the petitioner and another Driver, who were posted to work in the said bus, recorded daily defects in the important parts of the bus, namely, steering and brake. The second respondent, instead of permanently setting right the defects, carried out only temporary repair works and directed the petitioner and other Driver to run the bus. On 26.10.1999, the said Driver, namely, Balaji, wrote in the log-book of the bus that there was a chance for accident, if the defects are not set right. On 27.10.1999, the said Driver refused to drive the bus due to its defects. After some repair work, the bus was taken for the 1st shift. The petitioner was asked to drive the bus in the 2nd shift on 27.10.1999. The petitioner drove the bus very carefully, but with difficulties. If the petitioner refused to drive the bus, he would have to face the action from the second respondent. Therefore, he drove the bus. While so, three cyclists came on the opposite direction and on seeing them, the petitioner gave horn and further, slowed down the speed of the bus. At the time, the bus got shaken and a sound came from front. The said three cyclists were hit by the bus. Thus, the accident happened.



W.P.(MD)No.1002 of 2016

WEB COPY

3. It is further submitted by the learned counsel for the petitioner that the petitioner is not at all responsible for the accident. The petitioner was forced to drive the bus with mechanical defects. However, the Police filed a final report against the petitioner and the Branch Manager of Depot. After trial, the learned Judicial Magistrate-II, Udumalaipettai, convicted the petitioner and imposed him with the punishment of imprisonment for one year, by his judgment dated 06.02.2002. As against the same, the petitioner filed an appeal in CrI.A.No.58 of 2002. The learned Principal District and Sessions Judge, Coimbatore, by its order dated 24.09.2002, dismissed the appeal by confirming his conviction in the case, but modified the punishment of imprisonment from one year to six months. Thereafter, the petitioner filed the Revision before this Court in CrI.R.C.No.1865 of 2002. This Court, by its order dated 01.02.2003, set aside the petitioner's conviction by giving a finding that the mechanical defects in the bus, as pointed out by the Motor Vehicle Inspector, was the sole reason for the accident. However, the petitioner was dismissed from service.



W.P.(MD)No.1002 of 2016

WEB COPY

4. During the course of enquiry by the Department, the petitioner wanted log-book to be produced for enquiry. The log-book was not produced. However, the Enquiry Officer found that the petitioner is responsible for the accident. Based on the enquiry report, the petitioner was dismissed from service. In the second show cause notice, dated 16.10.2000, the petitioner reiterated about the non-production of log-book. Had the log-book been produced before the Enquiry Officer, the finding of the Enquiry Officer would have been different. No proper opportunity was given to the petitioner during oral enquiry. This issue was raised before the trial Court in I.D.No.150 of 2004. The learned trial Judge has not given any finding as to whether non-production of log-book resulted in prejudice to the petitioner. The learned Labour Judge proceeded to confirm the order of dismissal on the ground that the petitioner should have refused to drive the bus after coming to know about the defects. His finding is not correct for the reason that the petitioner cannot refuse to drive the bus and if he refused to drive the bus, it would have resulted in departmental action by the second respondent. The learned counsel for the petitioner further submitted that the dismissal of the petitioner on its confirmation by the Labour Court is against



W.P.(MD)No.1002 of 2016

WEB COPY

the evidence and principles of natural justice and law and thus, prays for setting aside the award and allowing the petitioner to work. In this regard, he relied on the judgement of this Court in the case of ***E.Maari vs. The Managing Director, Tamil Nadu Transport Corporation (Villupuram Dvn., III) Ltd, Kancheepuram and another*** reported in **2013 (4) LLN 705 (Mad.)** and the relevant paragraph is extracted hereunder:

“15. Of course, for the sake of argument it can be contended that the petitioner after test driving the vehicle in the depot could have refused to take the bus for the trip and asked for a spare bus. But the fact remains that the defects reported by the previous driver was some how rectified by doing welding work and thereafter, the petitioner was asked to take the bus for the trip. As rightly pointed by the learned counsel for the petitioner, the petitioner could not have refused to take the bus when the technical staff including the junior engineer wanted him to take the bus for the trip stating that the defect pointed out by the previous driver was rectified and any refusal on the part of the petitioner would have landed him in trouble as he would be proceeded against for insubordination. This aspect was not properly considered by the learned Presiding Officer of the Labour Court. When a vehicle with weak suspension assembly is driven on the road for quite a long distance, there is every possibility of the



W.P.(MD)No.1002 of 2016

suspension assembly being broken. Such an event will happen due to the wear and tear and the jolts in the road. The mere fact that with such defective suspension assembly the vehicle had run more than 400 kms will not justify the opinion that there was no defect in the suspension assembly.

16. For the said reasons, this Court comes to the conclusion that the finding of the learned Presiding Officer of the Labour Court in this regard is nothing but a perverse finding. A perusal of the report of the Enquiry Officer would clearly show that there was a biased approach and the finding was perverse. The learned Presiding Officer of the Labour Court also has not approached the problem with open mind and the fact that three persons died on the spot and three persons were injured, out of whom one later on succumbed to injuries, weighed with the Presiding Officer of the Labour Court to hold that the accident was not due to any mechanical defect but due to rash and negligent driving of the vehicle. The said finding of the Presiding Officer of the Labour Court is not based on any legally reliable evidence and on the other hand, it is based on surmises. Proper approach would have resulted in a finding that the accident occurred due to mechanical defect on account of poor maintenance which lead to the failure of the front right side wheel suspension and that the same was not due to any rash and negligent act on the part of the petitioner. The learned



WEB COPY



W.P.(MD)No.1002 of 2016

Presiding Officer of the Labour Court ought to have held that the charges against the petitioner were not proved. There cannot be a better case than this to show perversity in finding. Since the finding of the Enquiry Officer and the finding of the Presiding Officer of the Labour Court are perverse, the writ petition is bound to succeed.”

5. In response, the learned counsel for the second respondent submitted that proper enquiry was conducted. Only after finding that the petitioner was alone responsible for the accident by his rash and negligent driving, the petitioner was dismissed from service. The learned Labour Judge also found that proper enquiry was conducted and the petitioner was responsible for the accident and confirmed the order of dismissal. If the petitioner had driven the bus carefully within the permitted speed limit, the accident would have been avoided. In fact, he did not refuse to drive the bus after finding certain alleged defects in the bus, which shows that, the bus was in a perfect condition to drive and therefore, he proceeded with the 2nd trip. If the bus was not in a condition to drive, he should have refused to drive the bus. That was not done by the petitioner. Therefore, it is not open to the petitioner to claim that the bus had mechanical defects and therefore,



W.P.(MD)No.1002 of 2016

the accident had happened. The accident happened only because of rash and negligent driving of the bus driver, namely, the petitioner. He was rightly dismissed from service because of causing death of two persons and the same was confirmed by the Labour Court, finding merit in the dismissal order. Therefore, the learned counsel for the second respondent prayed for confirming the award of the learned Labour Judge and for dismissal of this Writ Petition.

6. Further, the learned counsel for the second respondent relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Maharashtra State Road Transport Corporation vs. Dilip Uttam Jayabllay*** in ***Civil Appeal No.7403 of 2021*** for the proposition that the punishment imposed against the petitioner cannot be considered as disproportionate for the reason that the punishment was imposed after considering all the aspects. The relevant portion is extracted hereunder:

“10.5. Now so far as the order passed by the Industrial Court ordering reinstatement with continuity of service by invoking clause No.1(g) of Schedule-IV of the MRTU & PULP Act, 1971 is concerned, as per clause No.



1(g) only in a case where it is found that dismissal of an employee is for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment. Clause No.1 of Schedule-IV of the MRTU & PULP Act, 1971 reads as under:-

"Schedule IV

1. To discharge or dismiss employees-

- (a) by way of victimisation;*
- (b) not in good faith, but in the colourable exercise of the employer's rights;*
- (c) by falsely implicating an employee in a criminal case on false evidence or on concocted evidence;*
- (d) for patently false reasons;*
- (e) on untrue or trumped up allegations of absence without leave;*
- (f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;*
- (g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of*



service of the employee, so as to amount to a shockingly disproportionate punishment."

Applying Clause No.1(g) of Schedule-IV of the MRTU & PULP Act, 1971, to the present case it cannot be said that the dismissal of the respondent was for misconduct of a minor or technical character, without having any regard to the nature of the misconduct. The respondent-workman has been held to be guilty for a particular charge and particular misconduct. Even the past record of service of the respondent has not been considered by the Industrial Court. As per case of the appellant-MSRTC the respondent-workman was in service for three years and during three years' service tenure he was punished four times. Therefore, it cannot be said that the order of dismissal was without having any regard to the past record of the service of the respondent. Therefore, in the facts and circumstances of the case, the Industrial Court wrongly invoked clause No.1 No. 1(g) of Schedule-IV of the MRTU & PULP Act, 1971.

11. Even otherwise in the facts of the case when in the departmental enquiry, it has been specifically found that due to rash and negligent driving on the part of the driver - respondent, the accident took place in which four persons died, when the punishment of dismissal is imposed it cannot be said to be shockingly disproportionate punishment. In the



W.P.(MD)No.1002 of 2016

departmental proceedings every aspect has been considered. At the cost of repetition, it is observed that even the Industrial Court has not interfered with the findings recorded by the enquiry officer in the departmental proceedings. Therefore, in the facts and circumstances of the case, the Industrial Court committed a grave error and has exceeded in its jurisdiction while interfering with the order of dismissal passed by the disciplinary authority, which was not interfered by the Labour Court."

7. I have considered the rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

8. Charge Sheet filed by the Inspector of Police, Udumalaipettai, in Crime No.192 of 1999 has been produced before this Court. It is seen from the final report that not only the petitioner, the Branch Manager of the Branch-II, Palani, is also added as accused. The accusation against the petitioner is that he drove the bus bearing Registration No.TN-57-N-1005 on the date of the accident with mechanical defects in a rash and negligent



W.P.(MD)No.1002 of 2016

WEB COPY

manner and dashed against the three cyclists which resulted in death of two cyclists and simple injury to one cyclist. The allegation against the second accused, namely, Branch Manager is that the bus bearing Registration No.TN-57-N-1005 is under his care and has negligently not corrected the defects of the said bus as noted by the A1 (petitioner) in the log-book before the accident and thereby, failed to guard against the probable danger to human life from the said vehicle and thereby, A2 (Branch Manager) has committed the offence punishable under Section 287 I.P.C. Thus, it is made clear that the bus involved in the accident bearing Registration No.TN-57-N-1005 had mechanical defects and that was noted by the petitioner in the log-book. Despite that, the second accused, namely, Branch Manager allowed the petitioner to drive the bus and the petitioner also, after knowing the bus having mechanical defects, drove the bus, which ultimately resulted in accident.

9. It is submitted by the learned counsel for the petitioner that both the trial Court and First Appellate Court found that the accused / petitioner was driving the bus in a rash and negligent manner and committed



W.P.(MD)No.1002 of 2016

the offence under Section 304(A) of I.P.C. However, in the revision filed by the petitioner against the order of the Sessions Court, the Revisional Court on going through the evidence on records found that even in the charge sheet it has been stated that accident had happened only due to the mechanical defects. The relevant portion is extracted hereunder:

"The learned counsel for the petitioner relied on the evidence of PW16 / the Motor Vehicle Inspector that the leg break was working only to the extent of 68% and it is not equal on both sides. The front side spring assembly main blade was in a broken condition and when brake is applied, the vehicle would swerve towards right side. It was the opinion of the Motor Vehicle Inspector that the accident would have taken place because of the mechanical defects. Thus, finding that the accident had happened because of the mechanical defects. This court, after considering the facts and circumstances of the case, set aside the judgment dated 24.09.2002 made in Crl.A.No.58 of 2002 by the Principal District Sessions Judge, Coimbatore and acquitted the petitioner."



W.P.(MD)No.1002 of 2016

WEB COPY

10. The learned counsel for the second respondent submitted that the judgment of the Criminal Court is not binding on the Labour Court or the Writ Court. Therefore, merely because the petitioner was not found guilty by the Revisional Court, he cannot escape from the liability. In this regard, he produced the judgment of the Hon'ble Supreme Court of India in the case of ***Karnataka Power Transmission Corporation Limited, Represented by Managing Director (Admin. and HR) vs. Sri C.Nagaraju and another*** in ***Civil Appeal No.7279 of 2019*** and the relevant paragraph is extracted hereunder:

“13. Having considered the submissions made on behalf of the Appellant and the Respondent No.1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The Disciplinary Authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under



W.P.(MD)No.1002 of 2016

the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal [13] Court, is justified and needed no interference by the High Court.”

11. He also relied on the judgment of the Hon'ble Supreme Court of India in the case of **Cholan Roadways Limited vs. G.Thirugnanasambandam** reported in (2005) 3 SCC 241 and the relevant paragraphs are extracted hereunder:

“22. In Pushpabai Parshottam Udeshi and Others Vs. M/s. Ranjit Ginning & Pressing Co. Pvt. Ltd., this Court observed: (SCC pp.750-51, para 6)

"6.The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused



W.P.(MD)No.1002 of 2016

it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence"

34. This decision also has no application to the facts of the present case. In the instant case the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well-settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, further more, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of Res ipsa loquitur which was relevant for the



W.P.(MD)No.1002 of 2016

purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which in "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out."

12. It is true that the evidence recorded in a criminal case and the departmental proceedings to prove the charges are different. In criminal case, the charges against the accused are to be proved beyond any reasonable doubt. On the other hand, in the departmental proceedings it is enough that the charges against the delinquent are proved by preponderance of probability. Here, in the case on hand, especially, the case of the petitioner is that the bus bearing Registration No.TN-57-N-1005 had mechanical defects, in steering and brake. This was brought to the notice of the Management, not only by the petitioner but also by the other driver,



W.P.(MD)No.1002 of 2016

namely, Balaji, who had driven the bus. The Management instead of permanently resolving the issue, effected only temporary repair and forced the drivers to drive the bus. That was the main cause for the accident. To establish the petitioner's case that the bus had mechanical defects, that was noted by the petitioner in the log-book, petitioner wanted the Management to produce the log-book during the course of oral enquiry. The same was not produced by the Management for the reason that if they produced log-book, the entry recorded by the driver regarding the defects would come to light and that would go against the case of the Management. The Enquiry Officer found that the petitioner was guilty. In reply to the show cause notice, the petitioner raised the issue again, i.e., non-production of log-book and not giving proper opportunity. This issue was again raised before the Labour Court. However, the Labour Court just recorded the statement of the Management that the log-book was not traceable and proceeded to accept the report of the Enquiry Officer. The fact that the log-book was not produced, certainly would prejudice the interest of the petitioner. Had it been produced, the defects noted by the petitioner and other driver would have come to light, which is the reason for the accident. It is not open to the



W.P.(MD)No.1002 of 2016

WEB COPY

respondent Corporation to say that the log-book is not available. Log-book is an important document that has to be maintained. When the log-book is not produced, this Court has no option except to draw adverse inference against the Management. The learned Labour Judge missed this point and proceeded to confirm the finding of the Enquiry Officer. This Court finds that the claim of the petitioner that the bus bearing Registration No.TN-57-N-1005 had serious mechanical defects and despite that, the petitioner and other driver were made to drive the bus and that is the reason for the Investigating Officer to add the Manager of the Bus Depot as an accused in this case. Therefore, the main reason for the accident was the mechanical defects.

13. It is seen from the award that the learned Labour Judge found that the bus bearing Registration No.TN-57-N-1005 was driven by the petitioner during the 1st trip on 27.10.1999 and the petitioner found that there were defects in steering and brake and despite that, the petitioner continued to drive the bus in the 2nd trip. On the other hand, the case of the petitioner is that the 1st trip was driven by another driver and the petitioner



W.P.(MD)No.1002 of 2016

only drove the bus in the 2nd trip and the accident had happened during the 2nd trip. In the absence of trip sheet to show that petitioner drove the 1st trip and when it is proved that petitioner only drove the 2nd trip and accident had happened, the finding of the learned Labour Judge that the petitioner should have refused to drive the bus during the 2nd trip after coming to know about the defects during the 1st trip, is obviously contra to the pleadings and evidence.

14. In the facts and circumstances of the case, this Court has not relied on the Criminal Court judgment. From the finding of the learned Labour Judge, it is evident that no proper reason was given for the non-production of log-book and the finding that the petitioner drove the bus in the 2nd trip, after finding that there is defect in the bus during the 1st trip, is contra to the pleadings and evidence. It was found that the accident had happened only because of the mechanical defects as evidenced from PW16 / Motor Vehicle Inspector and the report of the Branch Manager. Therefore, the finding of the departmental proceedings that the petitioner was responsible for the accident and therefore, he is liable to be dismissed from



W.P.(MD)No.1002 of 2016

service and its confirmation in the Labour Court, in the considered opinion of this Court, is not correct and is liable to be set aside and accordingly, it is set aside. The second respondent is directed to reinstate the petitioner into service with all service benefits including the continuity of service and backwages.

15. Accordingly, this Writ Petition is allowed and the award passed by the first respondent in I.D.No.150 of 2004 is set aside. No costs.

10.08.2022

Index : Yes / No

Speaking Order : Yes / No

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W.P.(MD)No.1002 of 2016

WEB COPY

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1. The Presiding Officer,
Labour Court,
Trichy.
2. The General Manager,
The Management of
Tamil Nadu State Transport Corporation (Madurai) Limited,
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WEB COPY



W.P.(MD)No.1002 of 2016

G.CHANDRASEKHARAN, J.

vji

W.P.(MD)No.1002 of 2016

10.08.2022