



W.P.No.14804 of ----

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **28.06.2023**

Pronounced on : **30.08.2023**

CORAM:

THE HONOURABLE Mr. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.14804 of 2009
and M.P.No.1 of 2009

S.Kothandan

... Petitioner

Vs.

1. The Presiding Officer,
First Additional Labour Court,
Chennai – 600 104.

2. Tamil Nadu State Transport Corporation,
Villupuram Division II Ltd.,
Rep. by its Managing Director,
Formerly Pattukottai Azhagiri Transport Corporation,
Vellore -3.

... Respondents

Writ Petition is filed under Section 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the award dated 30.10.2008 passed by the First Additional Labour Court in I.D.No.233 of 2001 and quash the same and consequently direct the respondents to reinstate the petitioner in service with effect from 14.03.1996 with backwages, continuity of service and all other attendant and consequential benefits.



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For Petitioner : Mr.P.I.Thirumoorthy

For Respondents : Mr.M.Aswin for R2

ORDER

This writ petition has been filed to call for the records relating to the award dated 30.10.2008 passed by the First Additional Labour Court in I.D.No.233 of 2001 and quash the same and to consequently direct the respondents to reinstate the petitioner in service with effect from 14.03.1996 with backwages, continuity of service and all other attendant and consequential benefits.

2. The learned counsel for the petitioner submitted that the petitioner joined the services of the Transport Corporation as a Driver on 31.03.1983 and due to hard work he was promoted as Senior Driver with effect from 01.11.1989. On 09.03.1995, around 7.30 p.m. while he was driving the vehicle from Vellore to Chennai near Irunkattukottai race course ground, a motorcyclist who was driving in the mud road, suddenly came to the main road and hit the bus. To avoid the major accident, the petitioner applied the brake and turned the bus to the left side of the road and due to which the bus dashed



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against a bullock cart and a scooter which were coming from the opposite direction. The motorcyclist fell down and died on the spot itself. The cart man's leg got fractured and got admitted in the hospital. The accident had taken place only because of the rash and negligent driving of the motorcyclist.

2.1 The learned counsel would further submit that neither the management nor the Labour Court noticed the fact that if the petitioner had driven the bus in a rash and negligent manner, the passengers would have been thrown out and hurt, but there were no injuries to the passengers. Without conducting any proper enquiry, the inspecting authority submitted an incomplete report and the same was filed by the management. The evidence placed by the petitioner was not considered by the Enquiry Officer, management and the Labour Court.

2.2 The learned counsel would further submit that the Labour Court held that the domestic enquiry is proper and by order dated 14.03.1996 the petitioner was dismissed from service. In the criminal proceedings one Deivan has deposed that the petitioner had not driven the bus in a rash and negligent manner but the said Deivan was not enquired in domestic enquiry. When



M.W.1 Umapathy gave evidence contrary to the evidence of Deivan, the benefit of doubt should have been given to the petitioner as he already stated that he never drove the vehicle in a rash and negligent manner and there was no injury to the passengers.

2.3 The learned counsel further submitted that it is no doubt true that preponderance of probability is sufficient in the departmental proceedings. But in this case where there are two different views, one by Deivan before the Criminal Court and by Umapathy in the Domestic Enquiry proceedings, the benefit of doubt should have been given to the petitioner both by the management and the Labour Court. The management should not have inflicted capital punishment and should not have confirmed the same more particularly when the Labour Court has got power under Section 11 A of the ID Act to interfere with the punishment. The order of dismissal was passed on the findings of the Enquiry Officer that the four charges framed against the petitioner in charge memo dated 13.04.1995 (Exs.W3 and M1) were proved without taking into consideration of the explanation dated 09.05.1985. In the said explanation the petitioner had clearly stated that the accident referred in the charge memo had not occurred due to the rash and negligent driving of the



petitioner but due to the unavoidable circumstances wherein the petitioner had properly signalled the bullock cart to overtake it and while doing so suddenly a motorcyclist without any headlight had come over to the main road from the side road and with an intent to avoid accident, the petitioner drove the bus to the left side and it hit the backside of bullock cart and at the same time the motorcyclist dashed against the bus at the right hand side and hence the accident occurred.

2.4 The learned counsel would further submit that the Enquiry Officer has also failed to note the submission of the petitioner that the bus which he drove on that day cannot go beyond the speed limit of 60 kmph and hence there is no possibility of rash and negligent driving. The Labour Court ought to have held that the Enquiry Officer failed to note that no passenger from the bus has been examined as witness to prove the charges against the petitioner and the Enquiry Officer has mainly relied on the evidence of one Umapathy who has given in his evidence as if he was personally present in the scene of occurrence. But in fact, the said Umapathy had arrived at the scene of occurrence only at 11.30 p.m. wherein the accident had took place at 7.30 p.m. In the petitioner's explanation (Ex.M6 dated 11.07.1975) to the second show



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cause notice dated 03.06.1995 (Ex.M5) the petitioner has clearly established that the punishment of reduction in pay is not sustainable in law and he was acquitted by the learned Magistrate, Madhuranthagam since the charges were not proved in the case filed against the petitioner with regard to the earlier accident occurred on 08.05.1986 as there was no proof to the fact that the petitioner had driven the vehicle rash and negligently.

2.5 The learned counsel would further submit that the explanation given by the petitioner vide Ex.M6 dated 11.07.1995 would clearly reveal that the charges framed against him vide Ex.W5 dated 03.06.1995 were adequate and the explanation is not properly considered by the management and management failed to apply its mind to the facts of the case before the passing the order of dismissal. The petitioner submitted the explanation dated 09.05.1995 vide Ex.M2 to the charge memo dated 13.04.1995 (Ex.M1) was adequate to establish that the accident occurred on 09.03.1995 at 19.30 hrs at Erungattukottai was not due to rash and negligent driving of the petitioner but due to the situation explained by the petitioner. The Labour Court ought to have held that before passing the order of dismissal dated 14.03.1996, the respondent corporation has failed to take into consideration of the fact that



vide Ex.W1, the petitioner was promoted as a Senior driver on and from 01.11.1989 and letter of appreciation was also issued vide. Ex.W2.

3. The main contention of the learned counsel for the petitioner is that the findings of the Labour Court confirming the order of the management is perverse and the Labour Court ought to have been inferred with the punishment invoking its powers under Section 11 A of the ID Act. Hence the award dated 30.10.2008 passed by the First Additional Labour Court in I.D.No.233 of 2001 has to be quashed and the respondents should be directed to reinstate the petitioner in service with effect from 14.03.1996 with backwages, continuity of service and all other attendant and consequential benefits.

4. In support of his above contentions, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in the case of ***Brijesh Chandra Dwivedi (Dead) thr. LR's. Vs. Sanya Sahayak and others in Civil Appeal No.7382 of 2021*** dated 25.01.2022. The relevant portions of the said judgment is extracted hereunder:



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“... 9. However, it is required to be noted that the employee was the driver posted in the Military and he was posted at the 12” Battalion, P.A.C. at Fatehpur. The allegation against the employee is at the time when the employee was driving the vehicle under the influence of liquor, the truck/vehicle was carrying P.A.C. personnel and the said vehicle/truck met with an accident with a jeep. His defence that due to the break failure, the accident took place and the truck dashed to the backside of the jeep has been disbelieved. The fact that he was driving the truck under the influence of alcohol has been established and proved, even on the medical examination conducted on the same date. Driving a truck carrying the P.A.C. personnel under the influence of alcohol is a very serious misconduct and such an Indiscipline cannot be tolerated and that too in the disciplined Military.

10. Merely because there was no major loss and it was a minor accident cannot be a ground to show leniency. It was sheer good luck that the accident was not a fatal accident. It could have been a fatal accident. When the employee was driving a truck carrying the P.A.C. personnel, the lives of those P.A.C. personnel who were travelling in the truck were in the hands of the driver. Therefore, it can be said that he played with the lives of those P.A.C. personnel, who were on duty and travelling from Fatehpur to Allahabad on Kumbh Mela duty.

11. Even otherwise, driving a vehicle under the influence of alcohol is not only a misconduct but it is an offence also. Nobody can be permitted to drive the vehicle under the influence of alcohol. Such a misconduct of driving a vehicle under the influence of alcohol and playing with the life of the others is a very serious misconduct. There are also other misconducts earlier committed by the employee.

...

13. In view of the above and for the reasons stated hereinabove and in the peculiar facts and circumstances of the case, narrated hereinabove, the



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award of punishment of dismissal can be said to be too harsh, the punishment of dismissal is directed to be converted into compulsory retirement of the employee. As the employee has since died, and on converting the punishment of dismissal to that of compulsory retirement, death-cum-retirement benefits as also the benefit of family pension, if any, shall be paid to the legal heirs of the deceased employee in accordance with law and bearing in mind that punishment of dismissal has now been converted into one of compulsory retirement. The present appeal is partly allowed to the aforesaid extent. However, there shall be no order as to costs.”

5. Counter affidavit filed by the second respondent on 23.06.2023. The relevant portions of the said counter affidavit are extracted hereunder:

“... 7. I further submit that while driving the bus, the driver has to take care of the public who were traveling inside the bus and outside the bus, with utmost care and responsibility. But on 09.03.95, the Petitioner had performed his duty carelessly and drove the bus in a rash and negligent manner and thus caused accident resulting in the death of a scooterist and two bullocks, grievous injury to bullock cart driver and damages to the bullock cart and also caused damages to our vehicle.

...

19. I further states that despite this the motor accident tribunal in M.C.O.P.No.53 of 2000, Chengalpattu filed by the one Venugopal have gave a find that the bus driver have drove the bus in rash and negligent manner and awarded the amount of Rs.2,32,594/- with 7.5% interest and Cost. Based on order Rs.3,84,607/- deposited on 21.09.2005.”



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6. Heard both sides and perused the materials available on record.

It is pertinent to extract the findings of the Labour Court award which reads as under:

“9. A careful perusal of the enquiry proceedings would show that the enquiry officer had given sufficient opportunity to the delinquent/petitioner to let in evidence to substantiate his case. The delinquent/petitioner instead of taking steps to summon those conductor and one Devalan had asked the enquiry officer to consider his explanation as his evidence. M.W.1 put a question as to why he overtook the bullock cart at the time of occurrence. The delinquent categorically replied that he overtook the bullock cart under the impression that there was no vehicle coming on the opposite side. Further he replied that the scooterist without any signal suddenly crossed from the mud road to the tar road portion which alone made the occurrence fatal.

10) It is an admitted fact that the petitioner/delinquent failed to produce any evidence to substantiate his version before the enquiry officer. The petitioner in this proceedings also had not taken any steps to substantiate his case before this Court. It is evident from his evidence before the enquiry officer that the petitioner was not vigilant while overtaking the bullock cart.

Further, had he been driven the bus in a careful manner, he would have stopped the vehicle with the scooter approached the bus suddenly. The petitioner could the scooter. The petitioner not control his vehicle when he saw admitted that, the scooter came on the mud portion of the road without light. If it is so there was ample opportunity available to the petitioner to see the scooter at a safe distance since the front lights of the bus was so powerful.

11) It is an admitted fact that the bullock cart is a slow moving transport system. Therefore while overtaking, it is the duty of the petitioner to slow down



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the bus and to take utmost care while negotiation. But it has not been done so by the petitioner. Therefore, the petitioner/delinquent could not avert the accident in time. It was his rash and negligent driving which caused the fatal accident. The enquiry officer in his enquiry report had well analysed the entire episode at length. The enquiry officer observed that the petitioner went near the bullock cart and tried to overtake fiercely without noticing the scooterist. He relied the evidence that the bus was crossed and stopped after 100 feet away from the ill-fated bullock cart. He observed that the petitioner even after the knock against the bullock cart had driven the vehicle in the national high way carelessly. Applying the principles “res ipso loquitor the enquiry officer found the delinquent guilty of the charges levelled against him. The observations made by the enquiry officer were based on sound principles of appreciation of evidence placed before him. Therefore I find nothing to interfere in the findings given by the enquiry officer. The past record of service of the petitioner is also not favourable to him. Therefore I find no mitigating circumstances to lessen the punishment imposed by the punishing authority in this case: Therefore, the petitioner is not entitled for the prayer as prayed for and the point No.2 is answered accordingly.”

7. The Labour Court based on the oral and documentary evidence has come to the above categorical finding that the charges against the petitioner are proved and concluded that due to the rash and negligent driving of the petitioner, the accident occurred. It has also taken into consideration the past records of the petitioner.



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8. It is a well settled law that this Court under Article 226 of the Constitution of India cannot interfere with the findings / award of the Labour Court unless it is perverse and arbitrary.

9. In view of the above factual matrix of the case and the findings of the Labour Court, this Court is of the considered view that there is no perversity in the Award passed by the first respondent Labour Court in I.D.No.233 of 2001 dated 30.10.2008. Hence this Court is not inclined to interfere with the same.

10. In the result, the Writ Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

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J.SATHYA NARAYANA PRASAD, J.

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Pre-delivery order made in
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