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WP.Nos.14741 of 2010 & 22025 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.08.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.Nos.14741 of 2010
and 22025 of 2008

W.P.No.14741 of 2010

P.Subramani

... Petitioner

Vs.

1. The Presiding Officer,
Principal Labour Court, Chennai.

2. The Management,
Tamil Nadu State Express Transport
Corporation (Division-I) Ltd.,
Pallavan Salai, Chennai-2.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, after calling for the records pertaining to the Award, dated 26.02.2008 passed by the first Respondent in I.D.No.907/2001, quash the same in so far as depriving entire back wages and consequently direct the second Respondent to pay the Petitioner full back wages for the period of non-employment from

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28.04.1999 to 25.02.2008, together with interest, award costs.

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For Petitioner : M/s. V.Porkodi
for Mr.V.Ajoy Khose

For Respondents : R-1 Court
Mr.K.Kathiresan,
Standing Counsel for R-2

W.P.No. 22025 of 2008

The Management of Tamil Nadu
State Express Transport Corporation,
Tamil Nadu Division I,
Pallavan Salai,
Chennai-600 002.

...Petitioner

Vs.

1. The Principal Labour Court,
Chennai.
2.P.Subramani.

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in I.D.No.907 of 2001 on the file of the Principal Court, Chennai and quash the order dated 26.02.2008.

For Petitioner : Mr.K.Kathiresan,
Standing Counsel

For Respondents : R-1 Court
R-2- M/s.V.Porkodi
for Ajay Khose



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COMMON ORDER

These two writ petitions arise out of the award passed by the Labour Court in I.D.No.907 of 2001, dated 26.02.2008. Hence, both the writ petitions are taken up together and disposed of by this common order.

2. W.P.No. 14741 of 2010 is filed by the workman challenging the Award in so far as denial of back wages is concerned. W.P.No.22025 of 2008 is filed by the Transport Corporation challenging the Award in so far as it directs the reinstatement of the workman with continuity of service and all other attendant benefits.

3. The petitioner in W.P.No.14741 of 2010 will be referred to the workman and the petitioner in W.P.No.22025 of 2008 will be referred to as the Transport Corporation.

4. The workman was working as a driver under the Management of Tamil Nadu State Express Transport Corporation and was suspended from service from 28.04.1999 onwards. Subsequently a charge memo was issued



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to him on 15.05.1999 and four charges were framed against him which are as follows:

1. The workman drove the vehicle in a rash and negligent manner and caused death of 4 pedestrians and caused grievous injuries to another person,
2. The workman caused irreparable loss to the families of the deceased and untold sufferings to their families,
3. The workman was responsible for the hindrance to the passengers and caused loss of income to Corporation, and
4. The workman failed to observe the traffic rules.

5. The workman filed his explanation which was found unsatisfactory and therefore a domestic enquiry was conducted. Based on the findings of the enquiry officer, second show cause notice was issued to the workman regarding the punishment, to which, he submitted his explanation. As the explanation of the workman was found unsatisfactory, he was dismissed from service vide order dated 10.09.1999. The workman raised a dispute claiming reinstatement with continuity of service, backwages and all other benefits.



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6. It was the Transport Corporations case that because of the rash and negligent driving of the workman an accident occurred on 24.04.1999, in which four passengers died on the spot and one passenger was grievously injured. Therefore, the workman was suspended from service and after following the due process of law he was dismissed from service on 10.09.1999.

7. Before the Labour court, the workman examined himself as W.W.1 and marked Ex.W.1 to Ex.W.19. On the side of the Transport Corporation, one witness was examined as M.W.1 and Ex.M.1 to Ex.M.5 were marked.

8. The Labour Court on an appreciation of the entire evidence found that the charges against the workman were not proved. The Labour Court therefore directed the Transport Corporation to reinstate the workman with continuity of service and all other attendant benefits, but without back wages.

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WEB COPY 9. Aggrieved by the award of the Labour Court, the Transport Corporation as well as the workman have filed the above writ petitions.

10. The learned counsel for the Transport Corporation submitted that the Labour Court having found that the domestic enquiry was conducted in a fair and proper manner ought to have confirmed the findings of the enquiry officer. The learned counsel further submitted that four persons died due to the negligence of the workman and therefore the punishment of dismissal from service imposed on the workman after a fair and proper enquiry did not call for any interference.

11. The learned counsel for the workman on the other hand submitted that the Labour Court appreciated the entire evidence on record and concluded that the charges were not proved. The learned counsel further submitted that the findings of the Labour Court are not perverse and therefore they do not call for any interference in the writ petition. The



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learned counsel also submitted that once Labour Court found that the charges were not proved the Labour Court ought to have awarded backwages also.

12. I have heard both the learned counsel and perused the materials placed on record.

13. As the enquiry officer, in the absence of independent evidence, relied heavily on the investigation officer's evidence, the Labour Court did not countenance the finding of the enquiry officer that the charges were proved. The Labour Court relied on the admission of the investigating officer that had the workman/ driver turned the vehicle to the right side of the road, instead of left side, the bus would have collided with the on coming lorry which would have resulted in more casualties and damage. The Labour Court also relied on the order of the Division Bench of this Court in the case of *A.Mariasundararaj Vs. Cheran Transport Corporation Ltd.* and another in Writ Appeal No. 2238 of 2000, wherein the Division Bench



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held that, in the absence of independent evidence before the court, it was very difficult for the Court to confirm the punishment awarded as against the erring drivers.

14. In the light of the factual finding of the Labour Court, I am not inclined to re-appreciate the evidence as I find that there is absolutely no illegality or perversity in the said findings. As I find no perversity in the appreciation of the evidence by the Labour court, the finding of the Labour Court that the Transport Corporation has failed to prove the charges against the workman is confirmed.

15. As far as backwages is concerned, I am of the view that Labour Court is fully justified in denying the backwages to the workman. In a recent Judgment reported in the case of *Ramesh Chand vs. Management of Delhi Transport Corporation* reported in 2023 SCC Online SC 776, the Hon'ble Supreme Court has held that payment of backwages is not automatic on reinstatement. The Hon'ble Supreme court in the case of *J.K.Synthetics Ltd.*



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vs. K.P.Agrawal & anr. reported in 2007 (2) SCC 433 held that the burden is

on the workman to establish that he was not gainfully employed to sustain the claim for backwages. In the absence of any pleadings or an affirmation affidavit in support of the plea for backwages, I am of the view that the denial of backwages is justified.

In the light of the above discussions, I am of the view that there are no merits in these writ petitions and the same are dismissed. There shall be no order as to costs in both the writ petitions.

03.08.2023

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No

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To

The Presiding Officer,
Principal Labour Court,
Chennai.

N.MALA, J.

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