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W.P.No.23475 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.23475 of 2010
and M.P.Nos.1 of 2010 & 1 of 2011

The Management of
Tamil Nadu State Transport Corporation (Salem) Ltd.,
No.12, Ramakrishna Road,
Salem – 637 007,
rep. by its General Manager.

...Petitioner

-Vs-

1.The Presiding Officer,
Labour Court,
Salem.

2.R.Sridhar

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to quash the order in I.D.No.48 of 2005 dated 11.09.2008 on the file of the Labour Court, Salem.

For Petitioner : Mr.R.Babu

For R1 : Court

For R2 : No appearance



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ORDER

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This writ petition is filed by the petitioner Management, namely, Tamil Nadu State Transport Corporation (Salem) Ltd., as against the award dated 11.09.2008 passed by the 1st respondent/Labour Court, Salem in I.D.No.48 of 2005.

2.The 2nd respondent herein in the writ petition was employed as a driver in the petitioner Corporation. On 09.06.1997 the 2nd respondent was driving the bus bearing Regn.No.TN27/N0490 belonging to the petitioner Corporation, and the same met with an accident, as a result of which a pedestrian died.

3.A Charge Memo was issued to the 2nd respondent workman as if the accident was due to the rash and negligent driving of the 2nd respondent. Thereafter, not being satisfied with his explanation, the petitioner Management ordered domestic enquiry. It is admitted that the enquiry was conducted and the 2nd respondent workman also participated in the domestic enquiry. After providing sufficient opportunity to the 2nd respondent workman, the Enquiry Officer found that the charges were proved. Based on the Enquiry Report, a second show cause notice dated 26.03.1998 was served on the 2nd respondent



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along with a copy of the enquiry proceedings and findings for which the 2nd respondent submitted his explanations dated 27.04.1998. Having not been satisfied with the explanation offered by the 2nd respondent workman, he was dismissed from service by order dated 11.06.1998. The second respondent raised an Industrial Disputed in I.D.No.48 of 2008. The Labour Court though concluded that the enquiry was conducted by observing the principles of natural justice held that the punishment is not proportionate to the charges proved. It is seen that eye witness was examined during enquiry. From the Enquiry Report, the Labour Court found that the evidence recorded by the Enquiry Officer indicate that a person who saw the accident was examined to prove that the accident was not caused due to the rash and negligent driving of the 2nd respondent workman but due to the sudden crossing of road by the victim. The finding of the Enquiry Officer was held to be improper. There is no evidence to discredit the evidence of the passenger who deposed that the accident was not caused due to the rash and negligent driving of the 2nd respondent. The finding of Enquiry Officer is against the evidence recorded and was purely based on surmises.



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4.It is brought to the notice of this Court by the learned counsel that the 2nd respondent workman was acquitted in the criminal case booked against him for the rash and negligent driving of the vehicle. The Labour Court rightly held that the acquittal of the 2nd respondent workman by the Criminal Court is not binding on the disciplinary authority. However on merits of the case held that the entire evidence recorded by the Enquiry Officer is not sufficient to find the employee guilty of charges. A specific finding was rendered that the charges against the petitioner were not proved. Further, the Labour Court also held that the punishment is disproportionate to the charges proved against the employee. Hence the Labour Court, while setting aside the dismissal order dated 11.06.1998, directed the Management to reinstate the employee with continuity of service. Following the settled principles the Labour Court further held that the employee is not entitled for back wages and other monetary benefits. Aggrieved by the same, the Management has preferred the above writ petition, mainly on the ground that the findings of the Labour Court are perverse.

5.Though the petitioner Management has raised several grounds, the following facts are not in dispute. Before the Enquiry Officer, a passenger was examined. The finding of the Enquiry Officer is not specific as to whether the



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accident was caused due to the rash and negligent driving of the vehicle by the

2nd respondent workman. The petitioner Management witness before the Enquiry Officer has categorically stated that the accident was unpredictable and the way in which the witness gave the evidence rule out the charges of rash and negligent driving of the 2nd respondent. It is the evidence of independent witness before the Enquiry Officer that the pedestrian all of a sudden tried to cross the road from right to left side and that he was hit by the bus and fell down. The Labour Court further considered the tyre marks to show application of sudden brake. In the said circumstances, the findings of the Labour Court is unassailable.

6. Accordingly, this writ petition stands dismissed as devoid of merits. No costs. Consequently connected miscellaneous petitions are closed.

05.01.2023

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S.S.SUNDAR. J.,

cda

To

1.The General Manager,
The Management of
Tamil Nadu State Transport Corporation (Salem) Ltd.,
No.12, Ramakrishna Road,
Salem – 637 007,

2.The Presiding Officer,
Labour Court,
Salem.

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