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W.A.No.165 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

Writ Appeal No.165 of 2023
and
C.M.P.No.1577 of 2023

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The Management,
Rep. by its General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram Division-II) Limited,
Tiruvannamalai Region,
Tiruvannamalai.

.. Appellant

Vs.

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

2. K.Udayasuriyan - Ex.Driver

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 01.04.2021 passed by the learned Single Judge, in Writ Petition No.16504 of 2015 on the file of this Court.

Page No.1/12



W.A.No.165 of 2023

Writ Petition No.16504 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the first respondent in I.D.No.157 of 2014 and quash the award dated 29.01.2015 passed in the said I.D., as illegal.

For appellant : Mr.G.Saravanakumar

For respondents: Mr.S.T.Varadarajulu for R-2

R-1 - Court

JUDGMENT

The present appeal has been preferred against the order dated 01.04.2021 passed by the learned Single Judge in W.P.No.16504 of 2015.

2. The appellant is the Transport Corporation, which is aggrieved by the order passed by the learned Single Judge in confirming the Award of the Labour Court directing reinstatement without back-wages.

3. The Labour Court has passed the Award on 29.01.2015 directing the Management to reinstate the second respondent/employee in service



W.A.No.165 of 2023

with continuity of service with all other attendant benefits, but without back-wages.

4. The second respondent-employee has joined the services of the appellant/Transport Corporation as Driver who had driven the vehicle on 07.03.2010 and said to have committed a head-on collision with another bus, which was proceeding on the other side and caused the accident, wherein five passengers died and several others were injured and due to the rash and negligent driving of the vehicle, FIR has been registered, apart from the fact that the charge memo was issued to the employee. Not satisfied with the explanation, domestic enquiry was conducted, wherein the charges have been held to have been proved against the employee.

5. It is the case of the Management that the employee was involved in three other fatal accidents. He was imposed with minor punishment and taking note of the fact that the present charges had been proved and based on records, the employee was dismissed from service.



W.A.No.165 of 2023

6. The Labour Court, based on the evidence, came to the conclusion that the charges have not been proved and that the employee was driving the bus in an u-bend road and at that time, a Cow was crossing the road on the left to the right side. He wanted to avert the accident and applied brake, and this has resulted in the bus going in the other direction and thereby, caused the accident.

7. The Labour Court came to the conclusion on finding of facts that there was no evidence with regard to the rash and negligent driving on the part of the workman and taking note of the past record, he was deprived of back-wages in entirety.

8. The learned Single Judge, after analysing the Award, came to the conclusion that there is no perversity in the Award of the Labour Court and confirmed the Award of the Labour Court.

9. Though it has been contended by the Management that the employee had committed similar accident and that the punishment of



W.A.No.165 of 2023

dismissal from service is perfectly in order and that the Labour Court ought not to have interfered with the punishment imposed by the employer and the order of the learned Single Judge who has confirmed the Award of the Labour Court, is questioned in this appeal.

10. Though the contention of the learned counsel for the Management appears to be reasonable, in the present case on hand, the charges against the employee have not at all been established, and in that case, the Labour Court interfered with the punishment and deprived the back-wages relying upon the past record of the employee, which is not correct. In all fairness, the charges themselves having not been proved and relying upon the past record to impose the punishment and depriving back-wages is not warranted. However, the employee has not questioned that portion of the Award gone against him. The learned counsel for the employee submitted that the employee was drawing wages under Section 17-B of the Industrial Disputes Act during the pendency of the Writ Petition, as he was not gainfully employed. The Award of the Labour Court is dated 29.01.2015. The entire back-wages from the date of dismissal of the employee, namely



W.A.No.165 of 2023

on 25.09.2010 till the Award of the Labour Court, has been deprived by the Labour Court. In fact, as the industrial dispute was pending between the employee and the Management, the employer preferred an application seeking approval of the action under Section 33(2)(b) of the Industrial Disputes Act, 1947, and the action of the employer was confirmed by the authority. Thereafter, the employee has raised a dispute, which resulted in the passing of the Award by the Labour Court directing reinstatement of the employee without back-wages, but with continuity of service. The learned counsel for the employee submitted that the employee is 56 years old now and that he has got four more years of service to go.

11. Taking note of the fact that in order to avert the accident in causing the death of a Cow, the employee had applied brake and the bus took a different direction and had hit against the bus coming in the opposite direction and that apart, there was u-bend road. The employee cannot be faulted with, more so, when the employer's records show that "nothing" had happened and the relevant portion of the Award in paragraph 7 is extracted below:

Page No.6/12



WEB COPY



W.A.No.165 of 2023

"7. In the explanation submitted by the petitioner, he has stated that he was driving the bus in the 'U'-bend road on the right side and at that time a Cow crossed the road from left to right side and so he applied sudden brake. He has further stated that after the Cow has crossed, he tried to start the bus. While moving the bus, the other bus which was coming from Tiruvannamalai-Chennai on the opposite direction and hence he turned the bus to the left. But at that time the opposite bus hit against the right side of the petitioner's bus and thus the accident had occurred. The First Information Report was given by one of the passengers travelled in the bus TN-32-N-2780 which was coming to opposite direction to Chennai. In the FIR, it is found to be stated that the accident had occurred due to the negligence on the part of the petitioner who turned the bus to the right side and because of that, the bus came in the opposite direction hit against this bus. The bus which came in the opposite side also belongs to the respondent Corporation. And immediately after the accident, the respondent officials gone to the spot and conducted a spot enquiry. After that enquiry a report was submitted to the respondent and the same is marked as Ex.M.1. In the said report the cause of the accident and the lapse if any for the occurrence is shown as 'nothing'. It is also shown that the accident had occurred in the 'turning'. It is strange to note that even after a detailed enquiry, the lapse or wrong for the accident is recorded 'nothing'. But, however, the rash driving is shown in another place as the lapse of the driver. On the basis of the ground report, a charge memo was given to the



WEB COPY



W.A.No.165 of 2023

petitioner and Domestic Enquiry was conducted."
(emphasis supplied by us)

12. In fact, the Transport Corporation should have taken action against the person who has recorded "nothing". If the employee had not applied brake, the Cow would have injured/died in the accident and in order to avert that, he has applied brake, but the accident has taken place for no fault of the employee.

13. Since it is a finding of fact recorded by the Labour Court, we are not inclined to interfere with the Award of the Labour Court, as confirmed by the learned Single Judge.

14. Before this Court, the employee has filed an affidavit dated 21.02.2023 stating that, apart from wages drawn under Section 17-B of the Industrial Disputes Act, he is willing to give up 50% of the back-wages. The relevant portion of the said affidavit of the employee is reproduced

Page No.8/12



W.A.No.165 of 2023

hereunder:

WEB COPY

"4. I submit that the above appeal was listed for hearing on 21.02.2023. The appellant proposed to give reinstatement to me on condition to forego entire backwages. I am agreeing for reinstatement with continuity of service but I am willing to forego 50% backwages alone from the date of Award till the date of reinstatement and also agreeing to pay employer's contribution for the P.F. trust for the period of non-employment from 25.09.2010 to 29.01.2015 without interest. Further I am agreeing to deduct 17-B wages paid during the pendency of writ petition and agreed employer's contribution for the P.F. trust for the period of non-employment from 25.09.2010 to 29.01.2015 from the backwages payable to me."

15. Taking note of the submission of the employee that the back-wages had already been deprived of by the Labour Court and the employee has also now given up substantial portion of the back-wages, the difference

Page No.9/12



W.A.No.165 of 2023

in 50% of the back-wages after adjusting the wages under Section 17-B of the said Act, shall be paid to the employee within a period of three months from the date of receipt of a copy of this judgment. The employee shall be reinstated in service within one month from the date of receipt of a copy of this judgment. If the employer feels that the employee should not be reinstated as Driver, he can be posted in some other suitable post on par with the post of Driver, but however, the wages applicable not less than that of the Driver should be paid to him, and in any event, it shall not be less than his counter-parts. The entire period of service shall be reckoned for the purpose of continuity of service to enable the employee to get the terminal benefits like Provident Fund, Gratuity, Pension, etc., if the same are applicable to him. The employee's contribution and the employer's contribution towards PF, shall be paid by the employer for the entire period of his service from the date of the Award of the Labour Court till date. The employer shall pay the employee's contribution from the date of the reinstatement of the employee and the employee shall contribute his share from the date of drawing the salary. The employee is willing to pay his share of contribution towards PF from 2015 till date. The employee is also

Page No.10/12



W.A.No.165 of 2023

willing to pay the contribution of the PF amount from the date of dismissal till the date of the Award. The affidavit dated 21.02.2023 is filed by the employee to that effect, relevant portion of which is extracted supra. Since the arrears of wages are now going to be paid by the appellant/Management as per the time granted by this Court as noted above, the interest shall not be charged by the PF Trust.

16. With the above observations/directions, the Writ Appeal is disposed of. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.

(S.V.N., J) (R.K.M., J)
21.02.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

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To

The Presiding Officer,
Principal Labour Court, Vellore.

Page No.11/12



WEB COPY



W.A.No.165 of 2023

S. VAIDYANATHAN, J

and

R. KALAIMATHI, J

CS

W.A.No.165 of 2023

21.02.2023

Page No.12/12