



WEB COPY



WP.No.6747 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 6747 of 2015

The Joint Managing Director,
Tamil Nadu Co-operative Milk
Producers' Federation Limited,
Ambattur, Chennai – 600 098.

... Petitioner

Vs

1.M.Udayan

2. The Presiding Officer,
I Additional Labour Court,
City Civil Court Buildings,
Chennai – 600 104.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the 2nd respondent in I.D.No.267 of 2012 dated 25.11.2014 and quash the same

For Petitioner : Mr.R.Bala Ramesh
for Mr.L.Chandrakumar

For R1 : Mr.R.S.Anandan

For R2 : Court



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ORDER

This Writ Petition has been filed as against the Award dated 25.11.2014 passed in I.D.No.267 of 2012 by the second respondent, thereby ordered to reinstate the first respondent into service, continuity of service with 50% back wages.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the materials available on record.

3. Pending Writ Petition, the first respondent died and his legal heirs were substituted as respondents 3 to 5 herein.

4. The deceased first respondent was appointed as Heavy Vehicle Driver on 07.11.1987 in the petitioner's Federation at Transport Unit. He had joined duty on 16.11.1987. While he was driving Federation Lorry bearing Registration No.TNH 7330 carrying milk powder and polythene film from Ambattur Dairy for unloading the same at Sholinganallur Dairy, the lorry had run over a 55 years old male pedestrian in the Sardar Vallabai



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Patel Road, near Anna University, resulting in immediate death of the said person. Therefore, the deceased first respondent was placed under suspension and he was served with charge memo containing three charges which are as follows :

(a) The 1st respondent, Heavy Vehicle Driver, Ambattur Transport Section, while driving vehicle No.TNH 7330 carrying milk powder and ploythene film from Ambttur Dairy to Sholinganallur Dairy under trip sheet No.026209 on 21.11.2001 the lorry had hit and run over a male pedestrian aged 55 years at about 5.40 p.m. on Sardar Vallabai Patel Road (Near Anna University) due to negligent driving thereby attracting misconducts under Model Standing Order No.16(G)(K) and (Q).

(b) In view of the above accident a male pedestrian aged 55 years old was run over by the left front wheel and back wheel of the lorry resulting in immediate death at the spot of the accident.

(c) His negligent driving had caused disrepute to the organisation in the eyes of the general public, police and transport department officials.

5. Upon receipt of the charge memo, the deceased first



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respondent submitted his explanation. However, it was not satisfactory and domestic enquiry was ordered to be conducted. While pending disciplinary proceeding, the deceased first respondent was reinstated into service by an order dated 08.01.2002 and he had joined duty on 17.01.2002. During enquiry, the Enquiry Officer found all the three charges against him were proved and final show cause notice was issued to him enclosing with the enquiry report. On receipt of his explanation dated 05.12.2002, a final order was passed, thereby dismissing him from service with effect from 10.05.2003. Aggrieved by the same, the deceased first respondent preferred an appeal and the same was also rejected. Aggrieved by the same, he preferred Writ Petition before this Court in W.P.No.29886 of 2011 and this Court dismissed the writ petition as not maintainable and the deceased first respondent was given liberty to raise industrial dispute. In the meanwhile, on the criminal complaint, the deceased first respondent was charged and the Criminal Court acquitted him from all the charges on the ground that the prosecution failed to prove its case beyond any reasonable doubt.

6. The learned counsel for the petitioner would submit that the



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deceased first respondent was imposed with punishment for various misconducts committed during the service prior to his dismissal order. He was punished on 18 occasions for so many charges. Before the Enquiry Officer, the witnesses categorically deposed that only because of the rash and negligent driving of the deceased first respondent, the accident occurred and due to which a male, aged 55 years, died.

7. On perusal of the records revealed that the deceased first respondent, on the strength of the acquittal order passed by the Criminal Court dated 16.06.2004, preferred an appeal before the Managing Director, and after dismissal of the appeal, he had submitted a mercy petition. The same was rejected and thereafter, he also approached this Court by way of writ petition in W.P.No.29886 of 2011 and only thereafter he was given liberty to raise industrial dispute and filed petition.

8. Further, on perusal of the enquiry report, revealed that no eye witness was examined by the petitioner Management in order to prove the charges levelled against him. One person, who had travelled along with the



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deceased first respondent, was examined and he deposed that he did not see the accident and after hearing the noise he had seen that the deceased was run over by the lorry which was driven by the deceased first respondent. However, the Enquiry Officer concluded that only because of the rash and negligent driving of the deceased first respondent, the accident had occurred and he was responsible for the demise of the pedestrian.

9. He also relied upon the FIR registered against the deceased first respondent. Therefore, the conclusion of the Enquiry Officer is not based on the relevant and legally admissible evidence. That apart, no oral and material evidence were available before the Enquiry Officer in order to prove the charge that the deceased first respondent was driving his vehicle in a rash and negligent manner. No witnesses deposed about the rash and negligent driving of the deceased first respondent. In fact, before the Criminal Court, one of the witnesses deposed that suddenly the deceased crossed the road without noticing both sides of the road and he met with an accident. Therefore, the Criminal Court acquitted the deceased first respondent on the ground that the prosecution proved its case beyond any



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doubt. Therefore, the second respondent rightly set aside the order of dismissal and ordered to reinstate the deceased first respondent into service with continuity of service also with 50% of back wages. Therefore, this Court finds no infirmity or illegality in the order passed by the second respondent.

10. Accordingly, this Writ Petition stands dismissed. Due to demise of the first respondent, his reinstatement into service does not arise. The respondents 3 to 5, being the legal representatives of the deceased first respondent, are entitled to get other benefits as ordered by the second respondent. There shall be no order as to costs.

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Index:Yes/No
Internet:Yes/No

G.K.ILANTHIRAIYAN,J.

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To

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The Presiding Officer,
Additional Labour Court,
City Civil Court Buildings,
Chennai – 600 104.

W.P.No. 6747 of 2015
and
M.P.No.1 of 2015

18.07.2023