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W.P.No.14905 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.14905 of 2018

1.P.Muthurajan (deceased)

2.M.Vijayalakshmi ... Petitioner
[P2 – substituted as legal heir of deceased sole petitioner
vide order dated 12.07.2022 made in W.M.P.No.7650 of 2020]

Vs.

1.The Presiding Officer,
II Addl. Labour Court,
Chennai – 104.

2.The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai – 600 002.

3.General Manager – Management
State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai – 600 002.

4.Branch Manager,
State Express Transport Corporation Ltd.,
Trichi – 9.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
for issuance of Writ of Certiorarified Mandamus, calling for the records



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relating to the Award dated 31.08.2018 passed in I.D.No.12 of 2007, quash the same and consequently, direct the 2nd Respondent to reinstate the petitioner in service with continuity of service and with back wages and other attendant benefits, Award Costs.

For Petitioners : M/s.S.T.Varadarajulu

For Respondents : Labour Court [R1]
Mr.K.Kathinesan [R2 to R4]

ORDER

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Award dated 31.08.2018 passed in I.D.No.12 of 2007, quash the same and consequently, direct the second Respondent to reinstate the petitioner in service with continuity of service and with back wages and other attendant benefits, Award Costs.

2. It is the case of the petitioner that, he joined the services of the second respondent Corporation as a driver on 16.03.1993. Whiles, on 16.08.2001, he was in duty in route No.133 running between Karaikudi to Chennai, he took the vehicle at Karaikudi at about 20.00 hrs and



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proceeded towards Chennai. When the bus was driven carefully, he felt that, the bus was pulling to the left side and the brakes of the vehicle was not in good condition. Thereafter, he proceeded towards Chennai and on 17.08.2001 at about 02.10 hrs, when the bus was nearing Ulundurpet, a lorry which was going in front of the bus suddenly stopped without any signal. Due to sudden stopping of the lorry, he applied sudden brake, however, the left side of the bus got pulled and dashed on the rear part of the lorry, in which, the conductor died and the petitioner and seven passengers sustained grievous injuries, thereby, they were admitted in the Government Hospital of Ulundurpettai. Therefore, the second respondent Corporation initiated disciplinary proceedings against the petitioner by issuing a charge memo dated 14.09.2001. After conducting departmental enquiry, he was terminated from service vide order dated 05.12.2002. Challenging the same, the petitioner raised an industrial dispute in I.D.No.12 of 2007 before the first respondent/Labour Court and the Labour Court dismissed the said dispute. Aggrieved by the same, the petitioner has filed the above writ petition before this Court.



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3. The learned counsel for the petitioner submits that, the Labour Court had passed preliminary award on 21.11.2014 holding that the enquiry was not conducted in a fair and proper manner, whereas, in the final order, without examining any fresh witness and without marking any documents, the Labour Court had dismissed the dispute on the ground that the enquiry was conducted in a fair and proper manner and held that due to the negligence on the part of the petitioner, the accident had happened. The said findings rendered by the Labour Court is perverse and the same is contrary to the earlier preliminary award passed by the Labour Court. Accordingly, he prays for appropriate orders.

4. The learned counsel appearing for respondents 2 to 4 submits that, the petitioner had driven the bus in a rash and negligent manner and dashed against the lorry. The Law Enforcing Agency arrived at a conclusion that the accident had taken place only due to the negligence on the part of the petitioner, thereby, they filed charge sheet in C.C.No.137 of 2005 on the file of I Additional District Munsiff Court, Ulundurpet and all those documents were marked before the Labour Court. Initially, the Labour Court passed preliminary award holding that



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the enquiry was not conducted in a fair and proper manner. However, subsequently, the second respondent Corporation examined one Nagarajan as M.W.1 and marked Ex.M.1 to Ex.M.12, thereafter, the Labour Court dismissed the dispute, which cannot be interfered with. Accordingly, he prays for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents 2 to 4 and perused the materials available on record.

6. Admittedly, the petitioner/workman entered the services of the second respondent Corporation in the year 1993 and in the year 2001, the bus which he was driving was involved in a major accident, in which the conductor who travelled along with the petitioner died on 17.08.2001 and seven passengers were severely injured. Though the petitioner/workman claims that the criminal case against him had ended in acquittal and the acquittal order passed by the I Additional District Munsiff Court was marked as Ex.W.6 and on behalf of the second respondent Corporation, they examined one Nagarajan as M.W.1,



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however, the said Nagarajan is not an eye witness and he was examined only for the purpose of marking the documents. Admittedly, the preliminary award was passed in favour of the petitioner/workman as if the enquiry was not conducted in a fair and proper manner. If it is so, the second respondent Corporation has to establish the misconduct as against the petitioner before the Labour Court by adducing fresh evidence. However, in the present case, the second respondent Corporation had miserably failed to examine independent witness to establish the misconduct against the petitioner/workman and the enquiry was conducted in fair manner. Except marking documents, no other independent witnesses were examined to establish the misconduct as against the petitioner. In the absence of any independent evidence or fresh evidence, who had been examined before the Labour Court to establish the misconduct of the petitioner, the preliminary award cannot be overruled in an industrial dispute. Further, there is no material, which could form the basis of arriving at a different finding. Therefore, the award passed by the Labour Court cannot be sustained.



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7. During the pendency of the writ petition, the petitioner passed away and the service rendered by the petitioner is only eight years, hence, the petitioner is not entitled for any pensionary benefits, however, he is entitled only for terminal benefits.

8. In view of the above, the second respondent Corporation is directed to pay the admissible terminal benefits to which the petitioner/workman is entitled from the date of his joining till the date of death of the deceased workman, within a period of four (4) weeks from the date of receipt of a copy of this order to the second petitioner, who is the legal heir of the first petitioner. However, the petitioner is not entitled for any backwages and pensionary benefits.

9. This writ petition is disposed of in the above terms. No costs.

19.09.2023

Index :Yes/No
Speaking order / Non-speaking order
NCC :Yes/No
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M.DHANDAPANI, J.

sp

To

- 1.The Presiding Officer,
II Additional Labour Court,
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Pallavan Salai, Chennai – 600 002.
- 3.The General Manager – Management,
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