



W.P.No.1692 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.16924 of 2022

and

W.M.P.No.16210 of 2022 and W.M.P.Nos.12553 and 12558 of 2023

The Management,
Tamil Nadu State Transport Corporation Limited,
Villupuram Region,
Salamedu,
Villupuram.

... Petitioner

Vs.

S.A.Ezhumalai

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the award made in I.D.No.5 of 2020 dated 30.09.2021 on the file of the Labour Court, Cuddalore and quash the same.



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For Petitioner : Mr.T.Chandrasekaran

For Respondent : Mr.A.Mohamed Ismail

ORDER

The impugned award dated 30.09.2021 in I.D.No.5 of 2020 passed by the Labour Court, Cuddalore is under challenge in the present Writ Petition.

2. The writ petitioner is the Management of Transport Corporation. The respondent was working as a Reserve Driver in the petitioner Management from 28.08.2015. He was stopped from working for committing a fatal accident with effect from 06.02.2018. A charge memo was issued and based on the enquiry, he was terminated from service. Challenging the same, the respondent has filed Industrial dispute before the Labour Court seeking reinstatement, continuity of service and backwages. The Labour Court passed an award in I.D.No.5 of 2020 directing reinstatement with continuity of service and 50% backwages to be calculated on the last drawn wages of the respondent.



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3. The learned counsel for the petitioner Management submits that the respondent was involved in an accident wherein one person scammed to the injuries on the spot and another died while undergoing treatment and the third person sustained grievous injuries. On the basis of the complaint, FIR was lodged in Crime No.63 of 2018 against the respondent for committing accident by driving the vehicle in a rash and negligence manner. A charge memo was issued seeking explanation from the respondent which was found to be not satisfactory. The domestic enquiry was conducted and it was proved that the respondent is responsible for the accident. Thereafter, the name of the respondent was removed from the muster roll of the Driver finding him unfit for the post of Driver. Challenging the said termination, the respondent had filed Industrial Dispute in I.D.No.5 of 2020 before the Labour Court, Cuddalore.

4. The learned counsel for the petitioner Management challenges the impugned award directing reinstatement of the respondent with continuity of service and 50% backwages on the ground that the respondent



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was only a Reserve Driver and had not worked continuously 240 days in a calendar year. The Labour Court proceeded on the ground that before issuing the charge memo and without holding any enquiry, the respondent was stopped from work was unsustainable, as the enquiry is conducted in a fair and proper manner. The Labour Court failed to consider the documents marked before it and proceeded to pass an award. The learned counsel for the petitioner Management also submitted that the respondent was appointed only on temporary basis and there was no need for conducting any domestic enquiry for removal, since the order of simplicity termination is passed and there is no order of removal. Therefore, the respondent is not entitled to get any relief in the Industrial Dispute raised by him before the Labour Court. Citing the above grounds, the learned counsel for the petitioner Management seeks indulgence of this Court to set aside the impugned award.

5. The learned counsel for the respondent submitted that the case registered against the respondent with regard to the accident has ended in



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acquittal. However, the petitioner Management before issuing dismissal order to the respondent had not issued charge memo and also not conducted domestic enquiry in full fledged manner, no second show cause notice was issued, thus without following the procedure, the stoppage of work ordered by the petitioner Management on 06.02.2018 amounts to termination and it is against the principles of natural justice. Hence, he seeks for dismissal of this Writ Petition.

6. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

7. It is not in dispute that the respondent had committed an accident during his employment with the petitioner Management and a criminal case was registered against him. It is also not in dispute that two persons died due to the accident and one got injured and all the three persons filed MCOP before the Motor Accident Claims Tribunal. The Motor



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Accident Claims Tribunal decided the MCOPs by concluding that the respondent was not solely responsible for the accident and there was contributory negligence on the part of the deceased and the injured also. It is further to be noted that the petitioner Management had not taken any stand before the Labour Court that the respondent was gainfully employed elsewhere during his non-employment. That also led the Labour Court to come to the conclusion that the respondent was not gainfully employed elsewhere during the period of his non-employment and that by taking into account the conclusion arrived by the Motor Accident Claims Tribunal, the Labour Court directed reinstatement of the respondent with 50% backwages and continuity of service. The Labour Court had specifically directed the petitioner Management to calculate the wages based on the last drawn salary of the respondent taking into consideration the number of days he was allotted work by the petitioner Management as a Driver. This clearly shows that the Labour Court had taken into consideration that the respondent was engaged only as a Reserve Driver and had considered the case of both the petitioner as well as the respondent and balanced the equity by directing



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reinstatement with 50% backwages. Hence, I do not find any error in the award passed by the Labour Court.

8. Accordingly, this Writ Petition stands dismissed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

31.07.2023

NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

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Cuddalore.

2. The Management,
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