



W.P.No.8281 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.8281 of 2017

and

WMP.No.9072 of 2017

The Management,
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Erode-1.

...Petitioner

Vs.

1. The Assistant Commissioner of Labour,
Salem.

2. Loganathan

...Respondents

Petition filed under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorari to call for the records of the
first respondent in P.S.A.No.3/2015 dated 22.12.2016 and quash the same.

For Petitioner : Mr.Murali Vinoth

For Respondents : Mr.M.S.Premkumar, GA, for R1
: No Appearance, for R2



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ORDER

This Writ petition has been filed seeking quashment of the order of the 1st respondent dated 22.12.2016 made in P.S.A.No.3 of 2015.

2. The case of the petitioner is that, the 2nd respondent was appointed as a driver in the petitioner corporation at Maruthamalai Branch on 04.2.2010 and was subsequently transferred to Anthiyur Depot. While he was on duty on 01.06.2014 in a bus plying between Anthiyur and Nagercoil, the bus met with an accident due to his rash and negligent driving by dashing against a TATA Magic vehicle, due to which, a girl travelling as a gratuitous passenger in the TATA Magic Vehicle died on the spot, and for the said accident, a case in Crime No.249 of 2014 came to be filed under Sections 279, 337 and 304(A) of IPC. Pursuant to that, the 2nd respondent was temporarily suspended from service with effect from 02.06.2014 to 16.07.2014 and the 2nd respondent was granted 50% of the subsistence allowance for the said period. Though the petitioner sent a letter dated 15.07.2014 to the 2nd respondent to rejoin duty on 17.07.2014, which was received by him on 18.07.2014, there was no response and therefore, the



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petitioner again sent letters dated 28.10.2014, 16.01.2015 and 15.05.2015 directing the 2nd respondent to rejoin duty, however, he did not rejoin the duty. Hence, the petitioner corporation initiated departmental action against the 2nd respondent. However, to their shock and surprise, suppressing the fact that the suspension order was revoked and that the departmental action was initiated for the entire period of absence, the 2nd respondent filed an application before the 1st respondent seeking payment of a sum of Rs.1,16,118/- towards differential subsistence allowance together with interest and the 1st respondent, without considering any of the above said facts, allowed the application filed by the 2nd respondent by the impugned order and directed the petitioner to pay a sum of Rs.1,11,580/- towards differential subsistence allowance. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that, for the fatal accident committed by the 2nd respondent on 01.6.2014, he was temporarily placed under suspension with effect from 02.6.2014 to 16.7.2014, however, the same was subsequently revoked and the petitioner corporation sent a



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letter dated 15.07.2014 to the 2nd respondent directing him to rejoin duty on 17.07.2014 and though it was received by him on 18.07.2014, he did not take any steps to rejoin duty and despite the several letters sent by the petitioner corporation to the 2nd respondent directing him to rejoin duty, he failed to rejoin duty. Once the suspension order is revoked, the 2nd respondent is not entitled for any subsistence allowance and the failure on the part of the 2nd respondent in rejoining duty cannot be put against the petitioner corporation. However, the Labour court, held that, the petitioner corporation is liable to pay subsistence allowance to the 2nd respondent for the period from 17.07.2014 to 06.04.2015 and directed the petitioner corporation to pay a sum of Rs.1,11,580/- to the 2nd respondent which is wholly unsustainable and accordingly, prayed for appropriate orders.

4. On the above said contentions, heard learned Government Advocate appearing for the 1st respondent and perused the material documents placed on record.

5. Though notice was served on the 2nd respondent and his name is printed in the cause list, none appears for him nor he is present in court



today. However, considering the period of pendency of this Writ petition, this Court is inclined to dispose of this petition based on the available materials.

6. The employment of the 2nd respondent in the petitioner corporation is not in dispute. Admittedly, the 2nd respondent joined the services of the petitioner corporation as a Driver in the year 2010 and for the accident committed by him on 01.06.2014, the 2nd respondent was temporarily placed under suspension and the said suspension order was subsequently revoked and the 2nd respondent was permitted to rejoin duty from 17.07.2014 and the same is evident from the letter dated 15.07.2014 sent by the petitioner corporation.

7. When it is not disputed that, the suspension order was revoked, it is the duty cast upon the 2nd respondent to rejoin duty and after revocation of suspension order, the workmen is not entitled for subsistence allowance, unless the 2nd respondent establishes that, he was prevented from rejoining duty and only in such special cases, the 2nd respondent is entitled for subsistence allowance.



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8. In the present case, it is evident that the petitioner corporation called upon the 2nd respondent to rejoin duty, which clearly shows he was not prevented by the petitioner corporation and contra having not been established by the 2nd respondent before the 1st respondent, in the absence of any material documents to show that the 2nd respondent was prevented by the petitioner corporation from rejoining duty, the 1st respondent had mechanically ordered for payment of subsistence allowance of Rs.1,11,580/- in favour of the 2nd respondent for the period from 17.07.2014 to 06.04.2015, which necessarily warrants interference of this Court, as the same is unsustainable.

9. In view of the above, the impugned order of the 1st respondent dated 22.12.2016 made in P.S.A.No.3 of 2015 is set aside and accordingly, this Writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

04.08.2023

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

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The Assistant Commissioner of Labour,
Salem.



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M.DHANDAPANI, J.

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