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W.A. No. 923 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :: 21.04.2023

PRONOUNCED ON :: 25.05.2023

CORAM

THE HON'BLE MR. S.VAIDYANATHAN, ACTING CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

W.A. No. 923 of 2023

&

C.M.P. No. 9233 of 2023

The Management,
Tamil Nadu State Transport Corporation
(VPM),
Vellore Region,
rep. by its General Manager.

..Appellant

Vs.

1. The Presiding Officer,
Labour Court,
Vellore.

2. Mr.K. Chandran

..Respondents

Prayer: Writ Appeal as against the order dated 02.08.2022 passed in
W.P. No. 12595 of 2010.

For Appellant :: Mr.M. Aswin



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For Respondents :: R1- Labour Court

Mr.S.T. Varadarajulu for R2

J U D G M E N T

(Delivered by The Hon'ble Acting Chief Justice)

The present writ appeal has been filed by the Transport Corporation challenging the order of the learned Single Judge dated 02.08.2002 in W.P. No. 12595 of 2010.

2. The case of the employer was that the employee joined service on temporary basis on 27.02.1996 and within a period of 15 days, he caused an accident on 04.04.96 resulting in the death of a pedestrian and that the Corporation had to pay compensation of Rs.2,73,784/- to the legal representatives of the deceased in MACT O.P. No. 310/96. Since the employee was a temporary employee and had put in only 35 days of service, according to the employer, the employee would not be entitled to any relief.



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3. Admittedly, no enquiry was conducted. The Labour Court came to the conclusion that as the employee was dismissed from service and that there was no fault on the part of the employee and taking note of the totality of circumstances, directed reinstatement without backwages and without continuity of service. It was held that the employee would be reinstated in the same position which he was holding on 04.04.1996. The Labour Court, in paragraph No.16 of the award, has categorically held that the employee was appointed in accordance with the Rules and that the competent Criminal Court has held that the offences have not been made out. That apart, there was no domestic enquiry for the charges against the employee, but he was dismissed from service and therefore, reinstatement was justifiable. The learned Single Judge has also confirmed the award of the Labour Court. If the employee was a temporary driver and was under probation, as contended by the Management, he could have been terminated without causing a stigma. Once there is a dismissal based on a foisted charge that the employee has committed misconduct, namely, rash and negligent driving causing death of a passer-by, enquiry should have been conducted as rightly held by the Labour Court and as confirmed by the



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learned Single Judge. Taking note of 35 days of service, the Labour Court has awarded reinstatement without backwages and without continuity of service. It is represented that the employee had attained the age of superannuation in 2014. The award of the Labour Court is dated 06.11.2009. Though the employee would not be entitled to backwages prior to the date of the award, pursuant to the award of the Labour Court in directing the employee to be placed in the same position which he was holding on 04.04.1996, he would be entitled to wages from the date of the award ie., 06.11.2009 till the date of superannuation in 2014.

4. An affidavit dated 21.04.2023 on behalf of the employee has been filed stating that the employee is willing to give up 50% of the backwages. The relevant portion of the said affidavit filed by the employee is extracted hereunder:

“2. I submit that I joined in the service of the Appellant Corporation as Driver on 27.02.1996. I performed the job diligently and honestly without any blemishes. I was dismissed from service for causing accident on 4.4.1996. Without



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conducting enquiry I was sent out. Industrial Disputes in I.D. No. 169 of 2005 was allowed and the Labour Court, Vellore ordered reinstatement without backwages and without continuity of service. Against the award of the Labour court, the appellant filed W.P. No. 12595 of 2010 and it was dismissed on 2.08.2022. Against that order the present appeal is filed. I attained superannuation on 28.02.2014.

4. I submit that the above appeal was listed for hearing on 21.04.2023. The appellant proposed to settle by offering certain portion of backwages for the non employment period. I am willing to forego 50% backwages for the non employment period from the date of Award i.e. from 06.11.2009 to 28.02.2014.”

5. Taking note of the submission and in the light of the affidavit dated 21.04.2023 filed by the employee, since the employee has given up 50% of the backwages, we make it very clear that the employee shall be granted pension, if he is otherwise eligible, taking into account the date of entry into service. We direct the Management to pay 50% of the backwages due to the employee apart from extending terminal benefits like gratuity for



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the entire services from the date of the award till the date of superannuation.

This period alone will be taken into account as continuous service for the purpose of pension and gratuity as he has joined the services of the appellant Corporation on 27.02.1996 and the Labour Court has not held that the employee's entry into service shall be ignored for pension. The period from the date of dismissal till the date of award alone is excluded for pensionary benefits. The employee shall not be treated as a fresh entrant from the date of award. Since the employer and the employee have not contributed towards Provident Fund, the same need not be paid.

6. The writ appeal is disposed of with the above direction. No costs. Connected C.M.P. is closed..

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(S.V.N., ACJ) (R.K.M.,J.)
25--05--2023



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The Presiding Officer,
Labour Court, Vellore.



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AND

R. KALAIMATHI, J.

nv

Pre-Delivery Judgment in
W.A. No. 923 of 2023

25--05--2023