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W.P.No.11855 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.11855 of 2017

and

W.M.P.Nos.12787, 17933 & 17934 of 2017

The Management of
Metropolitan Transport Corporation Ltd.,
Pallavan House,
Chennai – 600 002.

... Petitioner

Vs.

1.The Presiding Officer,
II Additional Labour Court,
City Civil Court Annexure Building,
High Court Compound,
Chennai – 600 104.

A.Lewis (Deceased)
2.L.Mary
3.L.Thalanjia
4.L.Shobana

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the order passed in I.D.No.35 of 1998 dated 05.08.2016 on the file of 1st respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents : Mr.R.Jai Kumar
for M/s.T.Fenn Walter Associates [R2 to R4]



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ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records pertaining to the order passed in I.D.No.35 of 1998 dated 05.08.2016 on the file of first respondent herein and quash the same.

2. The case of the petitioner is that, one A.Lewis (hereinafter called as 'workman') was appointed as driver in the petitioner Corporation in the year 1985. In the year 1993, when he was assigned to bus route No.28L, he met with an accident while he tried to overtake one Maruthi Car at Muthusami Bridge and dashed the said vehicle, due to which, the said vehicle was damaged, thereby, a case was registered against him. The workman was brought to the Government Hospital, where, the doctor given certificate as if the workman has driven the vehicle on drunken condition. Thereafter, the accident Wing Inspector has inspected the accident spot and filed a report with sketch. Pursuant to which, the petitioner Corporation issued a charge memo to the workman on 26.04.1993 and the workman submitted his explanation on 07.05.1993. Thereafter, the domestic enquiry was conducted and the Enquiry Officer drawn a proven minute as against the workman and the said report was furnished to the workman enable him to make a representation. Thereafter,



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second show cause notice dated 09.08.1994 was issued, in which, the workman submitted his explanation on 07.09.1994 and order of termination was passed on 07.11.1994. Challenging the same, the workman raised an Industrial Dispute before the Labour Court and the first respondent/Labour Court and the Labour Court passed an award in favour of the private respondents for reinstatement with full back wages, continuity of service and all other attendant benefits. Challenging the same, the petitioner has filed the above writ petition.

3. The learned counsel for the petitioner submits that, the workman while he was in a drunken state dashed against the Maruthi Car, thereby, the said vehicle was damaged, for the damages sustained by the said vehicle, the disciplinary proceedings was initiated against the workman. Based on the proven minute of the Enquiry Officer, he was dismissed from service on 07.11.1994. Prior to the dismissal order, the workman suffered 15 punishments. Considering the past mis-conduct of the workman, the petitioner Corporation passed an order of dismissal, which cannot be interfered with. However, the Labour Court, without considering the said fact, passed award in favour of the private respondents, which is not sustainable. Further, though the workman not even averred anything for his gainfully employment during the non-employment period in the claim petition, however, the Labour Court awarded back wages in



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favour of the private respondents. In the absence of any averments or submissions in the claim petition or evidence, the Labour Court awarded back wages in favour of the private respondents, which is not sustainable.

4. He further submits that, during the pendency of the industrial dispute, the workman passed away in the year 2002 and his superannuation was in the year 2003, hence, there is no possibility of reinstatement. Accordingly, he prays for allowing the writ petition.

5. Per contra, the learned counsel appearing for the respondents 2 to 4 submitted that, the charge against the workman is dashing against the Maruthi Car, thereby, the said vehicle sustained damages, for which, the punishment imposed by the petitioner Corporation is highly disproportionate. In the absence of medical certificate from the doctor, the allegation made against the workman is not sustainable. The said issue was elaborately considered by the Labour Court and award was passed in favour of the private respondents, which cannot be interfered with. Accordingly, he prays for dismissal of the writ petition.



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6. 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.

7. Admittedly, the workman entered the service of the petitioner Corporation as a driver in the year 1985. In the year 1993, the workman in the drunken state dashed against Maruthi Car, thereby, the said vehicle got damaged. It is equally undisputed fact that, a criminal case was registered against the workman and departmental proceedings were initiated for the above the said mis-conduct and ended in dismissal from service. Now, this Court has to find that, whether the order of dismissal is justifiable for the accident committed by the workman or not. In the present case, the accident is not a fatal accident or major accident, since the said vehicle was only damaged. Further, the petitioner Corporation pleaded that the workman was in a drunken state when he dashed against the Maruthi Car, however, no medical certificate was marked before the Labour Court to prove that the workman was in a drunken state. For the above said charge, dismissing the workman from service is highly disproportionate. Hence, the order of reinstatement cannot be interfered with. The next issue arises in the writ petition is whether the back wages awarded by the Labour Court is based on the material evidence or not. In the present case,



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this Court perused the claim petition filed by the workman before the Labour Court and the same does not reveal any averments for his gainful employment during the non-employment period and the workman has not pleaded for the same in the claim petition. However, the Labour Court, without any pleadings or averments, mechanically awarded back wages in favour of the private respondents, which is not sustainable. Hence, the impugned award with regard to back wages is liable to be interfered with.

8. This Court is inclined to dispose of this writ petition with the following order:

(i) The petitioner Corporation is directed to pay the terminal benefits with continuity of service to the legal heirs of the deceased workman/A.Lewis 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. However, the deceased workman is not entitled for any back wages from the date of termination till the date of death.

9. This writ petition is disposed of with the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.



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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

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M.DHANDAPANI, J.

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