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W.P.No.13722 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.13722 of 2017

and W.M.P.No.14910 of 2017

The Management,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Salai,
Chennai-600 002.

.. Petitioner

Vs.

1. The Presiding Officer,
I Additional Labour Court,
City Civil Court Annexure Buildings,
Chennai-600 104.

2. Government Transport Employees Union,
Rep by the General Secretary,
No.2, Pallavan Salai,
Chennai-600 002.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ, order or direction of like nature calling for the records pertaining to the order passed in I.D.No.415 of 2015 dated 27.09.2016 on the file of the 1st Respondent herein and quash the same.



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For petitioner : Mr.M.Chidambaram

For Respondents : Mr.S.R.Varadarajan for R2

ORDER

Aggrieved by the impugned award passed by the 1st respondent/Labour Court in I.D.No.415 of 2015, the petitioner is before this Court by way of this Writ Petition.

2. For the sake of convenience, the petitioner herein will be referred to as “*Management*”. The 2nd respondent will be referred to as “*Respondent Union*”.

3. It is the case of the Management that one P.Arumugam was working as Driver in the Petitioner Corporation and he was assigned the duty in the bus proceeding from Anna Square to Tambaram. On 10.09.2010, while he was driving a bus, one of the bus passengers who tried to get down from the rear side of the bus at Venkateswara Hospital fell down and sustained grievous injuries and later he died. Since, the said accident had



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occurred due to the negligence on the part of the workman who drove the bus in a rash and negligent manner, a charge memo was issued to him, for which he submitted his explanation. Being unsatisfied with the explanation given by him, domestic enquiry was conducted and the enquiry officer submitted his report holding the charges proved against the workman. Subsequently, second show cause was issued to the workman, since there was no response from the workman, the management imposed the punishment of stoppage of increment for two years with cumulative effect. As against the said dismissal, the respondent union raised an Industrial Dispute in I.D.No.415 of 2015 before the 1st respondent Labour Court, wherein, the Labour Court had set aside the punishment imposed by the Management by ordering grant of increments with retrospective effect and payment of monetary benefits to the workmen. Challenging the same, the management has filed this Writ Petition.

4. Learned counsel for the management submitted that the workman is a habitual offender since the workman had already committed two accidents and this is the third accident. It is the responsibility of the



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driver to stop the passengers from getting off from the bus. He further submitted that if the workman had not driven the bus in a rash and negligent manner, the accident could have been averted. Hence, the workman is solely responsible for the cause of the fatal accident. Only after taking into consideration, the negligence of the workman in driving the bus as also his past misconducts, the management imposed the punishment of stoppage of increment. Accordingly, he prays for allowing this Writ Petition.

5. Learned counsel appearing for the 2nd respondent union on instructions submitted that negligence cannot be fastened on the workman alone, though the workman may have contributed partly to the said accident. Therefore, this Court may modify the award passed by the Labour Court in I.D.No.415 of 2015 by altering the punishment.

6. This Court heard the learned counsel appearing on either side and perused the materials available on record.



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7. The facts in the present case are not in dispute. Admittedly, the workman namely P.Arumugam who is the member of the Respondent Union was working as a driver in the petitioner corporation. The allegation levelled against the workman is that he had driven the bus in a rash and negligent manner thereby causing the death of one of the passengers who tried to get down from rear side of the bus.

8. For the said misconduct, the punishment imposed by the management for stoppage of increment for a period of two years with cumulative effect is disproportionate. However, the said punishment was subsequently set aside by the Labour Court by granting increments on retrospective effect and ordered payment of monetary benefits to the workman.

9. The main grievance of the management is that, the workman ought to have stopped the passengers from getting down from the running bus as the sole responsibility lies on the driver to take care of the passengers. The said stand of the petitioner is wholly flawed as the



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workman, being the driver of the bus, has no control over the passengers getting down from the bus. However, it should not be lost sight of that as the driver of the bus, the workman should have been more careful in moving the vehicle by looking at the rear view mirror to find out whether the passengers have got down from the bus or whether any passenger is trying to get down from the bus. So to that extent, definitely there is contributory negligence on the part of the workman. But the fatality of the incident would more be on the passenger who tried to get down from the moving bus and the accident cannot be said to have occurred due to the fault of the workman. In the aforesaid context, imposing punishment on the workman should be minimal and should not be shocking the conscience of the Court.

10. In such circumstances, this Court is of the view that the punishment of stoppage of increment for two years with cumulative effect, set aside by the Court shall stand modified as stoppage of increment for two years without cumulative effect, which would subserve the ends of justice.



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11. In view of the above, this Court is inclined to set aside the award passed by the Labour Court in I.D.No.415 of 2015 by modifying the Award from stoppage of increment for a period of two years with cumulative effect to that of stoppage of increment for a period of two years without cumulative effect.

12. Accordingly, the Writ Petition preferred by the management is allowed with the above modifications. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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

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M.DHANDAPANI, J.

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To

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I Additional Labour Court,
City Civil Court Annexure Buildings,
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