



WP.No.16212 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM:

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

W.P.No.16212 of 2017

& WMP.No.17519 of 2017

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

...Petitioner

Vs

1.The Presiding Officer,
Labour Court, Salem.

2.The Secretary, Thozhilaalar
Viduthalai Munnani, B-16,
Pokuvarathu Nagar,
Kolappanur, Gopi.
Erode-638456.

...Respondents

PRAYER : 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 made in I.D.No.45 of 2013 dated 24.2.2015 and consequently quash the same.

For Petitioner	:	Mr.Murali Vinoth
For Respondent-2	:	Mr.V.Ajoykhose assisted the Court



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ORDER

This is a petition filed by the petitioner corporation seeking to quash the award dated 24.2.2015 made in I.D.No.45 of 2013 on the file of the first respondent.

2. The facts leading to filing of this case are stated as follows :

(i) One Mr.N.Kanagaraj, who was a driver in the petitioner corporation, was a member of the second respondent union. He was stated to have committed various irregularities while on duty, based on which, he was given punishment very many times. When the said Mr.N.Kanagaraj was on duty on 24.2.2001 in the mofussil services route from Salem to Coimbatore, he was said to have driven the vehicle in a rash and negligent manner resulting in the death of a pedestrian.

(ii) Thereafter, the petitioner corporation issued a charge memo dated 05.3.2001, for which, he gave a reply dated 16.3.2001. Not convinced with the said reply, the petitioner corporation conducted a domestic enquiry and finally, the Enquiry Officer held that the charges levelled against the said Mr.N.Kanagaraj were proved. Pursuant to that, the petitioner corporation



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sent the second show cause notice dated 20.9.2001, for which also, he submitted his explanation. Not satisfied with that, vide proceedings dated 07.3.2002, the petitioner corporation imposed a punishment of reduction of his present stage of the basic pay to the minimum scale of pay in the cadre of driver with effect from 01.3.2002. As against the imposition of punishment, the said Mr.N.Kanagaraj filed an appeal, which also ended in dismissal.

(iii) Thereafter, the said Mr.N.Kanagaraj raised an industrial dispute before the first respondent, who, by the impugned award, set aside the dismissal order dated 07.3.2002, reinstated him with continuity of service and back wages and further directed to treat the suspension period from 27.2.2001 to 08.3.2001 as duty period.

3. On 29.6.2017 when the writ petition came up for admission, this Court granted an order of interim stay in WMP.No.17519 of 2017.

4. Learned counsel for the petitioner corporation would submit that the workman is a habitual offender since the workman had already



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committed several accidents during the course of his employment in the petitioner corporation. He further submitted that the accident could have been averted, if the workman had been more careful in driving the bus. Since, the workman is solely responsible for the cause of the fatal accident, he was imposed with the punishment of reduction of present basic pay to minimum scale of pay in the cadre of driver. The said punishment was imposed only after taking into consideration, the negligence of the workman in driving the bus as also his past misconducts. The Labour Court without adverting to the above facts as also the evidences and witnessess of the petitioner corporation, had erroneously passed the impugned award by setting aside the punishment imposed by the petitioner corporation which is not sustainable. Hence, the impugned award is liable to be interfered with.

5. Learned counsel who assisted the Court for the 2nd respondent/Workman would submit 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.45 of 2013 by altering the punishment.



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

7. The facts of the present case are not in dispute. Admittedly, the workman was employed in the petitioner corporation as driver. The allegation levelled against the workman is that he had driven the bus in a rash and negligent manner thereby causing a fatal accident of one pedestrian who was crossing the road. For the said misconduct, the management has imposed the punishment of reduction in present basic pay to minimum scale of pay in the cadre of driver which punishment was subsequently set aside by the Labour Court by the Labour Court by granting increments on retrospective effect and ordered payment of monetary benefits to the workman and also to declare the period in which the workman was under suspension as a duty period.

8. The main grievance of the management is that, as the sole responsibility lies on the driver to take care of the life of the pedestrians, the



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workman should have been more careful in moving the vehicle. However, it is to be pointed out that while crossing the road the responsibility also equally lies on the pedestrian and the pedestrian cannot be absolved totally from any negligence. The responsibility also lies with the pedestrian who was crossing the road so to see that whether any vehicle is proceeding towards while crossing the road.

9. On a careful perusal of the entire materials available on record, this Court is of the view that definitely there is contributory negligence on the part of the workman in moving the vehicle resulting in fatal accident but the workman alone cannot be fastened with the negligent act. Therefore, this Court is of the view that for the said misconduct, the petitioner corporation has no powers to impose such a punishment as per the standing orders of the petitioner corporation which was also not disputed by the petitioner corporation. In the aforesaid context, imposing punishment on the workman should be minimal and should not be shocking the conscience of the Court.



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10. In such circumstances, this Court is of the view that the award passed by the Labour Court requires to be modified to one of stoppage of increment for two years without cumulative effect, which would subserve the ends of justice.

11. In view of the above, this Court is inclined to set aside the award passed by the Labour Court in I.D.No.45 of 2013 by modifying the punishment to one of stoppage of increment for a period of two years without cumulative effect and the suspension period shall be treated as on duty for all purposes except for the purpose of backwages.

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 (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No
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M.DHANDAPANI,J

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To
The Presiding Officer,
Labour Court, Salem.

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