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W.P.Nos.1842 & 14644 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.1842 & 14644 of 2017

and

W.M.P.Nos.15893, 19372 & 19373 of 2017

W.P.No.1842 of 2017

S.Rajan

... Petitioner

Vs.

1.The Management,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Chennimalai Road,
Erode – 638 001.

2.The Presiding Officer,
Labour Court,
Salem – 7.

... Respondents

W.P.No.14644 of 2017

The Management,
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
Chennimalai Road,
Erode – 638 001.

... Petitioner

Vs.



W.P.Nos.1842 & 14644 of 2017

1. The Presiding Officer,
Labour Court, Salem.

2. S. Rajan

... Respondents

Prayer in W.P.No.1842 of 2017 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to implement the Award passed in I.D.No.198 of 2010 dated 18.05.2015 passed by the 2nd respondent and to settle 50% back wages from date of dismissal till date of award and settle full accrued wages from date of award till date of presumptive date of retirement and to settle all terminal benefits including Gratuity, Provident Fund, Leave Salary benefits and all other benefits treating the petitioner as the retired employee.

Prayer in W.P.No.14644 of 2017 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1st respondent made in I.D.No.198 of 2010 dated 18.05.2015 consequently quash the same.

W.P.No.1842 of 2017

For Petitioner : Ms. Rajini Ramadass
for M/s. A. Rajendran

For Respondents : Mr. M. Murali Vinodh [R1]
Court [R2]



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W.P.No.14644 of 2017

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For Petitioner : Mr.M.Murali Vinodh
For Respondents : Court [R1]
Ms.Rajini Ramadass
for M/s.A.Rajendran [R2]

COMMON ORDER

Since the issue involved in these writ petitions is one and the same, with the consent of the learned counsel appearing for parties, these writ petitions were heard together and disposed of by this common order.

2. The petitioner in W.P.No.1842 of 2017 is hereinafter referred to as Workman and the petitioner in W.P.No.14644 of 2017 is hereinafter referred to as Management.

3. The workman was working as a Driver in the Management from 29.10.1985. On 27.08.2008, the workman was driving the vehicle of the Management in a rash and negligent manner and dashed against a two wheeler, thereby, a fatal accident has been occurred. Therefore, a charge memo was issued and after following the procedures contemplated under the Standing Order for conducting disciplinary proceedings, the



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workman was dismissed from service on 07.04.2010. Challenging the same, the workman raised an industrial dispute before the first respondent/Labour Court in I.D.No.198 of 2010 and the Labour Court, after adjudication ordered for reinstatement with 50% back wages and continuity of service in favour of the workman. Therefore, the workman has filed a writ petition in W.P.No.1842 of 2017 to implement the impugned award passed by the Labour Court on 18.05.2015 and challenging the impugned award, the Management had filed a writ petition in W.P.No.14644 of 2017.

4. The learned counsel appearing for the Management submits that, apart from the accident, which is the subject matter of these writ petitions, the workman had committed several fatal accidents on various dates i.e., 30.12.1987, 11.05.1994, 24.09.2006 and one major accident on 31.08.1991 and two minor accidents i.e., on 01.08.1990 and 16.10.2002 and for the fatal accident happened on 11.05.1994, he was dismissed from service on 19.03.1996 and reinstated on 20.03.1998 pursuant to the award of the Labour Court and he is an habitual offender. However, without considering the same, the first respondent/Labour Court



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mechanically ordered for reinstatement, which is not sustainable. Further, the workman has not even pleaded for his gainful employment during the non employment period and without establishing the same before the Labour Court, the Labour Court had awarded 50% back wages in favour of the workman, which is not sustainable and the same is without any basis and the award passed by the Labour Court is perverse and the same is liable to be interfered with. Accordingly, he prays for allowing the writ petition in W.P.No.14644 of 2017 and dismissal of the writ petition in W.P.No.1842 of 2017.

5. The learned counsel appearing for the workman admitted the fact that the workman involved in two minor accident and one fatal accident. He also submits that, though earlier the workman was dismissed from service for the fatal accident committed by him, however, the same was set aside by the Labour Court and he was reinstated into service. Thereafter, due to negligence on the part of the motorcyclist, he dashed against the Management bus, thereby, the accident was happened. The said fact was elaborately considered by the Labour Court while deciding the issue. Further, before the Motor Accidents Claims Tribunal,



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the Management taken a stand as if the entire fault is on the part of the motorcyclist, whereas, in the departmental enquiry, they taken a stand as if the entire fault is on the part of the workman. It is further submitted that the workman specifically made an averment in paragraph No.12 in the claim petition that, he has not gainfully employed anywhere. Considering the said averment, the Labour Court had passed 50% back wages in favour of the workman, which cannot be interfered with. Accordingly, he prays for allowing the writ petition in W.P.No.1842 of 2017 and dismissal of the writ petition in W.P.No.14644 of 2017.

6. Heard the learned counsel appearing for the Management as well as the workman and perused the materials available on record.

7. Admittedly, the workman involved in fatal accident, thereby, a charge memo was issued. After conducting fullest enquiry, he was dismissed from service. Challenging the same, the workman raised a dispute before the Labour Court in I.D.No.198 of 2010. Before the Labour Court, no witness was examined on behalf of the Management as well as the workman and Ex.M1 to Ex.M19 were marked on behalf of the



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Management and Ex.W1, the order passed in C.C.No.168 of 2010 was marked on behalf of the workman. The Labour Court observed that, the Management has taken a stand before the MCOP Tribunal that the entire fault is on the part of the motorcyclist, however, contrary to the same, the Management has taken a stand that the entire fault is on the part of the workman. By considering the dual stand taken by the Management, the Labour Court passed the impugned award.

8. Further, it is brought to the notice of this Court that, the workman was retired from service in the year 2016, hence, the question for reinstatement does not arise. Now, the question is whether any back wages can be awarded in favour of the workman. A perusal of the claim petition filed by the workman reveals that, the workman had merely averred that after dismissal, it is impossible for him to search any alternative employment. However, he had not specifically pleaded that he had not gainfully employed anywhere. The said issue was not properly adjudicated before the Labour Court and without any documents, the Labour Court awarded 50% back wages in faovur of the workman, which is not sustainable and the same is liable to be interfered with.



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9. Hence, the award passed by the Labour Court is modified as follows :-

(i) the Management is directed to pay all the terminal benefits with continuity of service till the date of retirement to the workman, within a period of eight (8) weeks from the date of receipt of a copy of this order;

(ii) However, the workman is not entitled for any back wages from the date of dismissal (07.04.2010) till the date of reinstatement.

10. In view of the above modifications, both the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

20.07.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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The Presiding Officer,
Labour Court,
Salem – 7.



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M.DHANDAPANI, J.

sp

W.P.Nos.1842 & 14644 of 2017
and
W.M.P.Nos.25505 & 25506 of 2016

20.07.2023