



W.A.No.470/2023

1/8

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-02-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.470 of 2023

Tamil Nadu State Transport Corporation
(Coimbatore Division-I) Ltd.,
(Formerly known as Cheran Transport Corporation)
37, Mettupalayam Road,
Coimbatore – 641 043.

...

Appellant

-VS-

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.C.Swaminathan

...

Respondents

Appeal is filed under under Clause 15 of the Letters Patent against the order, dated 11.01.2001, passed in W.P.No.1872 of 1994, on the file of this Court.

For Appellant : Mr.T.Chandrasekaran

For Respondent 2 : Mrs.S.Girija



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JUDGMENT

This appeal has been preferred by the appellant Corporation, challenging the order of the learned single Judge, dated 11.01.2001, passed in W.P.No.1872 of 1994, confirming the award of the Labour Court, Coimbatore, in I.D.No.631 of 1989, dated 15.03.1993, ordering reinstatement of the second respondent-employee with continuity of service and other attendant benefits.

2. Pursuant to the award of the Labour Court and during the pendency of the Writ Petition, the second respondent-employee was reinstated in service on 22.10.1993. For the accident said to have been caused by the employee, who joined the service of the appellant Corporation on 20.03.1985, an F.I.R.was registered on 27.11.1987, apart from issuance of Charge Memo, dated 11.12.1987. The said accident resulted in the death of a rider of a motorcycle. After a detailed inquiry, the employee was dismissed from service on 29.07.1988.

3. Aggrieved over the order of dismissal, after failure of conciliation, the employee approached the Labour Court in I.D.No.631 of 1989. The Labour Court, after analysing the evidence, more so, that of the management witness, who has rendered evidence in favour of the employee stating that the accident took place due to the fault of



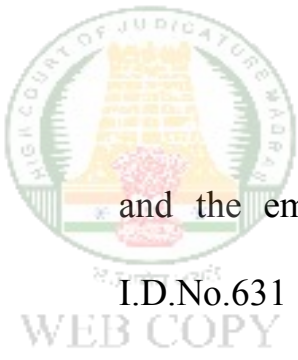
the rider of the TVS Moped and not that of the driver of the bus, namely, the employee, passed the Award, the relevant Paragraph 9 of which is extracted below for reference :

"9. In the departmental enquiry, on behalf of the management, one Thiru I.Rajasekaran, Assistant Manager, alone examined as witness. He was the person who visited the place of accident and submitted his report Ex.R.10 and Sketch Ex.R.11. In Ex.R.10 report, it is stated that one Thiru Govindaraj, who was riding a T.V.S.moped, while overtaking the vehicles, on seeing our bus, which was coming from opposite direction, all of a sudden, became panic and our driver Thiru.Saminathan, noticing the same, cornered the bus bearing registration No.T.M.L.4900 on the left side on the road. Thiru.Govindaraj, who came on the opposite direction, collided with the bus on the right corner of the bus and thrown away at the distance of 15 feet on the right corner of the road. The accident took place due to the rash and negligent riding of the moped by the moped rider without observing the traffic rules. There was no fault on the part of our driver. In the same way, he had also deposed in the departmental enquiry. He was not a person who witnessed the accident. But, no other eye witness was examined in the departmental enquiry. In the sketch Ex.R11, it is shown that the bus T.M.L.4900, after the accident was stationed on the west corner of the road at edge of tar-road on the east-west road and the T.V.S. moped was found around 15 feet away from the bus on the south-east side. In this sketch, no details regarding the place of collision of the vehicles and after collision where the bus got struck are found. However, the enquiry officer,



without accepting the evidence of the management side witness, based on the First Information Report (Ex.R.7) of the Police recorded against the petitioner on assumption decided that the petitioner alone was responsible for the accident and submitted his report accordingly. The person who had lodged the complaint was not examined as witness. The First Information Report is not proved or confirmed evidence. It is either to corroborate or point out the discrepancies of a witness. Therefore, the decision of the enquiry officer that the petitioner was responsible for the accident by driving the bus rashly and negligently, which is fully relied on the First Information Report, is not correct one. The oral and documentary evidences placed before the departmental enquiry have not at all proved the charges levelled against the petitioner. Therefore, the final report of the departmental enquiry officer is improper and the charges levelled against the petitioner are not at all proved. Accordingly, I decided this issue."

4. There is a categorical evidence by the management witness that there was no fault on the part of the driver of the bus and the Labour Court came to the conclusion that the charges against the employee were not proved. Accordingly, the Labour Court granted the relief of reinstatement in service with back wages and continuity of service, by setting aside the order of dismissal. The learned single Judge confirmed the award of the Labour Court, holding that the employee had been reinstated in service and that the employee was entitled to balance of back wages, based on the award, dated 15.03.1993,



and the employee was permitted to withdraw the amount, lying to the credit of I.D.No.631 of 1989.

5. During the course of arguments, learned counsel for the appellant produced a copy of the communication of the respondent employee, dated 28.04.2021, wherein, he has agreed to give up back wages for the period of non-employment; that a portion of the amount has already been withdrawn in two instalments by the employee; and that the remaining amount is lying in deposit.

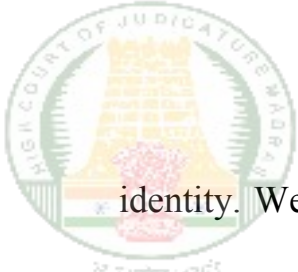
6. Learned counsel for the respondent employee would contend that as the employee wanted to go on VRS, he was willing to give up back wages and not otherwise; and, since the VRS application has not been accepted by the management, depriving back wages for that period based on the VRS application is not correct.

7. We have heard both sides.

8. The factum that there was an accident on 27.11.1987, wherein the rider of a TVS Moped died, and that the management witness has categorically admitted that the fault was on the rider of the Moped and not on the part of the driver of the bus is not in dispute. This fact has been accepted by the Labour Court and also by the learned



single Judge and that was the reason why the management has reinstated the respondent employee during the pendency of the writ proceedings. Since the Labour Court has rendered a finding of fact, it is not necessary for this Court to reappraise the evidence and come to a different conclusion. The communication produced by the employer may be taken note of, provided the employee was gainfully employed somewhere, and, in order to deprive back wages, proving gainful employment may be accepted. In the case on hand, it is not so. The appellant management wanted to deprive back wages on the ground that the employee was willing to give up the back wages for the period of non-employment till the date of reinstatement. The communication/letter has to be read as a whole and not in a truncated manner. The employee was willing to give up back wages provided his VRS application was accepted within a reasonable time. Since his application for VRS was not accepted and that the employee is going to retire tomorrow i.e., 28.02.2023, depriving the employee of back wages based on the said communication is not correct. Hence, we reject the contention of the appellant on that score also, while confirming the award of the Labour Court, as affirmed by the learned single Judge. We permit the respondent employee to withdraw the balance amount lying in deposit before the Labour Court and the Labour Court is expected to release the said amount together with interest accrued thereon within a period of 15 days from the date of receipt of a copy of this judgment. There is no need for the Labour Court to take no objection from other side, in case the respondent employee is able to produce his



identity. We make it clear that the entire period of service has to be taken into account for the purpose of settling the monetary benefits to the respondent on his retirement on 28.02.2023.

9. Writ Appeal is dismissed accordingly. No costs. Consequently, the connected C.M.P.No.4433 of 2023 is closed.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
dixit

(S.V.N.,J.) (R.K.M.,J.)
27-02-2023

To

The Presiding Officer,
Labour Court,
Coimbatore.

Note to Office :
Issue Order Copy by 14.03.2023.



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