



W.P(MD)No.25346 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.(MD)No.25346 of 2018

and

W.M.P(MD)No.22947 of 2018

Thamizhaka Arasu Pokkuvarathu Thozhilalar Sangam,

Through its General Secretary,

Sankaranarayana Pillai,

S/o.Thirumalaiyandi Pillai,

4, K.K.M – CITU, 23-B, Ranithottam,

Nagercoil – 1,

Kanniyakumari District.

... Petitioner

Vs.

The Management,

Tamil Nadu State Road Transport Corporation (Tirunelveli) Ltd.,

Represented by its Administrative Director,

Nagercoil Region, Ranithottam,

Nagercoil,

Kanniyakumari District.

... Respondent



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Prayer : Writ Petition is filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari call for the records, pertaining to the impugned order, passed by the Labour Court, Tirunelveli, in I.D.No.72 of 2016, dated 14.02.2017, and quash the same as illegal.

For Petitioner : Mr.C.Kishore

For Respondent : Mr.K.Sathya Singh
Standing Counsel

ORDER

This Writ Petition has been filed against the order dated 14.02.2017 in I.D.No.72 of 2016 passed by the Labour Court, Tirunelveli.

2. Heard Mr.C.Kishore, learned counsel for the petitioner and Mr.K.Sathya Singh, learned Standing Counsel appearing for the respondent and perused the material available on record.



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3. Brief facts of the case as per the averments made in the affidavit of the petitioner are that :

The petitioner is the Trade Union representing the Workmen one Mr.Hercules, who is the Driver in the respondent Management. On 31.01.2004, the said Hercules while driving the bus bearing Registration No.TN 74 0779 on the Balamore -Nagercoil Road at about 18.50 hours, the bus was stopped, for alighting the passengers and while the bus was proceed just 60 meters, the deceased who ride a bicycle in the opposite direction in a negligent manner and fall in a gutter and thereby, lost his control and dashed into the right side of the bus. Though the said Hercules was driving the bus slowly and steady manner, the accident occurred due to the negligence of the bicycle rider. Due to the collusion, the bicycle rider got injuries and hospitalized by the Driver in the same bus. But in the hospital the injured person was succumbed to injuries. To that effect, a case in Crime No.55 of 2004 was registered by Boothapandi Police Station.

4. The petitioner was suspended by order, dated 03.02.2004 and a departmental proceedings were initiated against the Driver. The



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main charge levelled against the Driver was that he drove the bus in a rash and negligent manner and thereby, caused an accident which resulted in a death of a person. After completion of the enquiry, the General manager of the respondent Management by order, dated 14.04.2005, imposed a punishment of stoppage of three annual increments without cumulative effect and the period of suspension was treated as Earned Leave. Against the said order, it appears that the petitioner filed appeal before the Competent Authority and by order dated 06.01.2010 the punishment was modified to the extent of stoppage of annual increment for two years without cumulative effect.

5. Meanwhile, a criminal case was registered against the petitioner in C.C.No.33 of 2004 on the file of the learned Judicial Magistrate, Boothapandi, for the offences under Sections 279 and 304 IPC, ended in acquittal by judgment, dated 17.12.2008. Against the order of punishment, the petitioner Association raised Industrial Dispute in I.D.No.72 of 2016 on the file of Labour Court, Tirunelveli. After hearing both sides, the Labour Court, by award, dated 14.02.2017, confirmed the punishment imposed for stoppage of annual increments for



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two years without cumulative effect. Against the order of the Labour Court dated 14.02.2017, the present Writ Petition is filed.

6. The learned counsel for the petitioner contends that as the charges levelled against the petitioner in the criminal case and the departmental proceedings are one and the same and at present Criminal Court acquitted the petitioner. The learned counsel further contends that the award of the Labour Court would not sustain and sought to set aside the punishment imposed against the employee and to allow the Writ Petition.

7. On the other hand the learned Standing Counsel appearing for the respondent submits that the orders passed by the Disciplinary Authority and the Appellate Authority are in accordance with law and the Labour Court also passed award considering the entire evidence available on record and taking into the gravity of the charges levelled against the Driver.



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8. The learned Standing Counsel further submits that there is no infirmity or illegality in the award passed by the Labour Court and as such interference of this Court is not required and requested to dismiss the Writ Petition.

9. The learned counsel for the petitioner has placed reliance of the judgments of the Hon'ble Apex Court in ***M.Paul Anthony Vs. Bharat Gold Mines Ltd., and another*** reported in 1999 (3) ***Supreme Court Cases - 679*** and ***G.M.Tank Vs. State of Gujarat and Others*** reported in 2006 (5) ***Supreme Court Cases - 446***.

10. Having heard the submissions of the respective counsels and upon perusal of the material available on record, it appears that the petitioner has raised Industrial Dispute against the punishment imposed to its member, who is working as a Driver in the respondent Management.

11. It is an admitted fact that the accident occurred on 31.01.2004 while Workmen was driving the respondent Corporation bus



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and caused accident by leading to the death of the Cyclist.

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12. Now the respondent Corporation after conducting departmental enquiry imposed punishment of stoppage of three annual increments without cumulative effect and the period of suspension was treated as Earned Leave. In an appeal, the said punishment order was modified by stoppage of annual increment for two years without cumulative effect. Aggrieved by the same, the petitioner raised dispute under Industrial Dispute Act, before the Labour Court, Tirunelveli.

13. The Labour Court has framed three issues :

1) Whether the charges against the Driver Thiru.Hercules have been proved in the internal enquiry and in the Court ?

2) If yes, whether the punishment awarded to him is justified ? and

3) Whether the Industrial Dispute is qualified to be allowed ?



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14. Before the Labour Court no witnesses are examined on both sides. On behalf of the Workmen side Ex.W1 to Ex.W10 were marked and on behalf of the Administration side Ex.A.1 to Ex.A.3 were marked.

15. In fact the Administration raised its primary objection before the Labour Court that with regard to the person who had gone on retirement cannot consider himself as the General Secretary of the Petitioner's Association and as such the Industrial Dispute filed by the retired employee in the capacity of the General Secretary is not maintainable. Considering the fact that there is no restriction that a retired person cannot be trade union representative and also its administrator. The Labour Court gave finding that the Industrial Dispute is sustainable.

16. Considering the material available on record, the Labour Court gave finding that the departmental enquiry was conducted fairly, properly and following natural justice. As per Ex.W4 i.e., the drawing related to the accident. On examination of the drawing, it is clear that the



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bus had traversed on the centre line and had dashed against the Cyclist who was coming on the west side of the road i.e., opposite direction and as a result, he was thrown about 7 feet away and shown lying on the ground and the drawing was prepared by the Inspector of Administration, strangely, concerned Officer was not cross examined by the Workmen.

17. In the judgment in the Criminal case which was marked as Ex.W10, the Criminal Court had pointed out that the Driver had driven the bus speedily as per the evidence of the eye witness by name Rajan and Sivarajan. They were not cross examined. As per the evidence of the Doctor, who performed autopsy, also deposed that demised persons liver and the spleen were found crumbled and also upper part of his lungs were damaged and in the right shoulder four bones were found broken.

18. Considering the same, the Labour Court opined that there is no chance for such damages happened unless the bus was travelling at a high speed and such type of wounds could not have sustained by the Cyclist on his free fall as contended by the Driver.



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19. Considering all these aspects, the Labour Court found that the explanation of the Driver is not true and accordingly, decided not to interfere with the punishment imposed by the Disciplinary Authority and as modified by the Appellate Authority.

20. On careful perusal of the award of the Labour Court, it appears that considering the entire evidence available on record, the Labour Court passed a reasoned order dismissing the Industrial Dispute.

21. This Court has considered the reliances placed by the learned counsel for the petitioner. Though this Court is not having any different opinion with regard to the proposition of law declared in those reliances, in our considered view, those judgments are not applicable to the facts and circumstances of the present case.

22. In our considered opinion, there is no illegality or irregularity in the order passed by the Labour Court and as such interference of this Court is not warranted.



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23. Accordingly, this Writ Petition is dismissed.

24. No costs.

25. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
Internet :Yes/No
NCC : Yes / No

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BATTU DEVANAND, J.

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