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W.P.(MD)No.24233 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.24233 of 2018
and
W.M.P.(MD)No.21917 of 2018

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region, Periyamilaguparai,
Tiruchirapalli.

... Petitioner

vs.

A.Sivalingam

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned award on the file of the Labour Court, Tiruchirappalli, dated 23.02.2017, in I.D.No.3 of 2011 and to quash the same.

For Petitioner : Mr.D.Sivaraman

For Respondent : Mr.S.P.Vijay Nivas



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ORDER

This writ petition is filed for writ of Certiorari, to quash the impugned award dated 23.02.2017 passed in I.D.No.3 of 2011 on the file of the Labour Court, Tiruchirappalli.

2. The respondent was working as a Driver in the petitioner corporation from 24.01.1981. On 12.01.2008, when the respondent was on duty as a Driver, at about 09.00 AM when he was trying to overtake the lorry which was proceeding ahead of the bus, he drove the bus in a rash and negligent manner without noticing the vehicles coming from other side and dashed against a cyclist and the cyclist died. The damages were caused to the bus to the tune of Rs.3,300/- and to the cycle to the tune of Rs.200/-. Hence a charge memo, dated 23.01.2008, was issued and the respondent submitted an explanation and an enquiry officer was appointed. The enquiry officer provided all necessary documents and also allowed the respondent to examine and cross-examine the witnesses.



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The respondent submitted eight documents. The delinquent has examined himself as witness and produced nine documents. The enquiry was conducted without violation of principles of natural justice and the enquiry officer has held the charges are proved vide report, dated 31.08.2009. Based on the report, the delinquent was directed to submit his objections for the proposed punishment.

3. After the receipt of the objection, the petitioner corporation had imposed punishment of dismissal from service on 19.03.2010 and submitted approval petition to the appropriate authority under Section 33(2)(b) of I.D. Act and the approval was granted. Aggrieved over the same, the respondent raised an industrial dispute in I.D.No.3 of 2011. The Labour Court by taking the submissions of the Management in MCOP No.284 of 2008 has come to the conclusion that the management themselves have submitted in favour of the delinquent, hence charges not



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proved, consequently punishment order was set aside and directed the management to reinstate the delinquent.

4. Pending I.D., the respondent had attained superannuation. Therefore, the Labour Court directed the management to settle the terminal benefits including backwages. Aggrieved over the same, the present writ petition is filed.

5. Heard Mr.D.Sivaraman, learned Counsel appearing for the petitioner and Mr.S.P.Vijay Nivas, learned Counsel appearing for the respondent and perused the records.

6. The learned Counsel for the petitioner submitted that already the respondent has committed two accidents and based on the rules and regulations, the respondent was imposed lenient punishment. This was



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his 3rd accident and as per rules, the respondent ought to be dismissed. Hence, the disciplinary authority had initiated disciplinary proceedings. There is no violation of principles of natural justice while conducting the enquiry. The Labour Court has come to the wrong conclusion by taking the submissions of the management before the MCOP Tribunal and on principle of estoppel the management cannot take any different stand. This issue is already considered in several cases and had held that the Labour Court cannot swayed away by the stand of management in MCOP case and the plea of estoppel cannot be entertained. Therefore, the finding of the Labour Court based on the stand of the management in MCOP case is erroneous.

7. The Learned Counsel relied on the judgment rendered in the case of *Sevugaperumal Vs. Superintendent of Police, Dindigul and another* reported in (2009) 2 MLJ 849 and he relevant portion is



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extracted here under:

“16. In this connection, the learned counsel for the petitioner relied on a plea made by the department before the Motor Accident Claims Tribunal which found the petitioner guilty even though the department took the stand that the petitioner was not responsible for the accident. This is normally the stand taken by the department. But the Motor Accident Claims Tribunal did not find the said stand of the department acceptable. Rather, the Tribunal found him guilty, which finding has not been challenged by the petitioner before any higher forum.”

8. The Labour Court has taken the counter of the Management filed in MCOP and has come to the conclusion that the charges are not proved. The Labour Court ought to have taken the findings of the MCOP Tribunal and not the counter of the Management. Therefore, this Court is of the considered opinion the conclusion rendered by the Labour Court is on the basis of erroneous fact and totally against the judgment stated



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supra.

9. It is seen that the respondent had attained superannuation and at this stage the case cannot be remit back to the Labour Court for reconsideration. Hence, by taking the long service rendered by the respondent from 1981 onwards into consideration, this Court is inclined to modify the punishment as compulsory retirement fixing the date of dismissal as the date of compulsory retirement. The respondent is eligible for all the monetary benefits and service benefits that is applicable to the said punishment. The petitioner Corporation shall pay interest as stated in the statutes. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.



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10. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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

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