



W.A.No.593 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU
and
THE HONOURABLE MR.JUSTICE P.DHANABAL

Writ Appeal No.593 of 2024
and
CMP.No.4172 of 2024

The Management,
Tamil Nadu State Transport
Corporation Ltd.,
Villupuram Region,
Salamedu, Villupuram

... Appellant

Vs.

S.A.Ezhumalai

.... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the order passed in W.P.No.16924 of 2022, dated 31.07.2023.

For Appellant : Mr. T. Chandrasekaran



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For Respondent : Mr.K.M. Ramesh, Senior counsel
for Mr.V.Subramani

JUDGMENT

(Judgment of the Court was delivered by J.NISHA BANU, J.)

This Writ Appeal has been filed by the appellant/Management challenging the order dated 31.07.2023 passed in W.P.No.16924 of 2022, in and by which, the learned Single Judge confirmed the award passed by the Labour Court in I.D.No.5 of 2020 .

2. The brief facts of the case of the appellant are that the respondent was appointed as a Reserve Driver on 28.08.2015 and on 06.02.2018, he was stopped from work for committing fatal accident. A charge memo was issued by the appellant Management on 07.04.2019. Therefore, a dispute was raised on 28.08.2019 before the Assistant Commissioner of Labour for Conciliation and the respondent did not attend the enquiry. However, an industrial dispute was raised on 17.09.2020 by the workmen/respondent in I.D.No.5 of 2020 claiming reinstatement, continuity of service with monetary benefits. The Management also filed counter statement. The



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Labour Court has passed an award on 30.09.2021 reinstating the respondent with continuity of service along with 50% backwages. The writ petition filed by the appellant management was also dismissed. Hence, the present appeal.

3(i) Learned counsel for the appellant Management would state that if the drivers and conductors appointed in the public Corporation go on leave and weekly off, without hindrance to the public transport and to attend the service of the public at large during the period of festival and functional seasons, the Government used to appoint reserve drivers and conductors wholly on temporary basis . By such guidance of the Government order, the respondent was appointed as reserve driver temporarily. Even in the order of appointment, the respondent was informed that if the work of the respondent is not satisfactory, he will be removed from service without any previous notice.

(ii) Learned counsel for the appellant Management would further state that the respondent had committed three accidents and because of rash and negligent act of the respondent, two lives of the individuals were taken.



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Domestic enquiry was completed and the Management, having not satisfied with the work performance of the respondent and considering that he is not fit enough to continue the work as a driver, decided to remove the name of the respondent from the muster roll of the driver. Accordingly, by order dated 06.11.2019, the name of the respondent was removed.

(iii) Learned counsel would further state that the findings of the Labour Court that there was no negligence on the part of the respondent is not supported by any material evidence. The respondent had worked only as a reserve driver and had not worked continuously either 240 days in a year or 480 days in two years. Hence, he could not claim permanency. The findings of the Labour Court that the workman has right to raise industrial dispute under Section 2-A of the I.D. Act is not supported by any documentary evidence. The Labour Court, without analysing the documents and facts of the case erroneously passed the impugned award granting the relief of reinstatement with continuity of service with 50% backwages and the Writ Court has also confirmed the same. Therefore, the learned counsel would pray to allow the present appeal by dismissing the order passed in the



4. (i) Per contra, the learned senior counsel appearing for the respondent/workman would state that subsequent to the stoppage of work, the respondent was served with charge memo by the management on 07.04.2018 and he had also submitted his reply on 21.05.2018. However, the management had not intimated whether his explanation was accepted or rejected but a notice was issued on 18.08.2018 directing the respondent to appear for domestic enquiry on 27.08.2018. The respondent appeared for the enquiry and refuted all the charges. The enquiry officer obtained signatures from the respondent in the already written papers and he was informed that the management will send correspondence to him.

(ii) Learned counsel for the respondent would further state that the management, before issuing the dismissal order to the respondent, had not issued charge charge memo and no second show cause notice was issued. Thus, the appellant management had not followed the principles of natural justice. He would further state that once the management had defended the



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case on the ground that the accident is not because of the negligence of the respondent/driver before the Motor Accident Claims Tribunal, now cannot rely that the negligence of the respondent alone is the reason for the accident. No eye witness and the conductor of the bus were examined to rely that the rash and negligent driving of the respondent is the reason for the accident. The stoppage of work ordered by the Management amounts to termination and it is against the principles of natural justice. Hence, he would pray to dismiss the appeal.

5. Heard the learned counsel for the appellant, the learned senior counsel appearing for the respondent and perused the materials available on record.

6. It is the admitted fact that the appellant/Management appointed the respondent on 28.08.2015 and issued with stoppage of work order on 06.02.2018. The respondent herein has filed a petition in I.D.No.5 of 2020 before the Labour Court, Cuddalore, against the appellant/management challenging his termination from service and also sought a direction to the



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appellant/Management to reinstate him in service with continuity of service and backwages. The Labour Court, by award dated 30.09.2021 in I.D.No.5 of 2020, directed the appellant/Management to reinstate the respondent in service with continuity of service along with 50% of backwages to be calculated on the last drawn wages of the respondent on the ground that the appellant/management did not conduct proper comprehensive domestic enquiry and also failed to prove that the respondent is rash and negligent in committing the accident and the procedure under Section 25 F of Industrial Disputes Act is not followed.

7. It is seen from the available materials that the management has not produced any document to prove that the respondent had not completed 240 days of work in a year or 480 days in two years before the Labour Court and it does not specifically deny the continuous work of the respondent and does not produce any documentary evidence to negative the claim of the respondent regarding continuous work of the respondent. Therefore, the contention of the appellant/Management that the respondent had not been in continuous service of 240 days of employment in a year, so that he cannot



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claim the status of worker or permanent employee, cannot be countenanced.

Therefore, the respondent comes within the purview of workman as defined under section 2(s) of Industrial Disputes Act.

8. Further, the case registered against the respondent with regard to the accident has been ended in acquittal. In the claim cases, it was recorded that the accident had occurred due to the contributory negligence on the side of the driver of the two wheeler also with whom, the respondent met with an accident.

9. It is pertinent to point out that before issuing dismissal order to the respondent, the appellant has not issued charge memo and also not conducted domestic enquiry in full fledged manner and no second show cause notice was issued. Thus, without following the due procedure under section 25F of the Industrial Disputes Act, his name was removed from the muster roll, followed by which, stoppage of work order was issued by the appellant /Management, which amounts to termination and the same is against principles of natural justice. Hence, the findings of the Labour Court



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that the workman is entitled to raise industrial dispute as per Section 2(s) of I.D.Act and he is entitled for the relief of backwages, which was confirmed by the writ court, are sustainable. The Labour Court had taken into consideration that the respondent was engaged only as a Reserve Driver and directed the appellant Management to calculate the wages based on the last drawn salary of the respondent, taking into consideration the number of days he was allotted work by the appellant Management as a driver. The Labour Court, only after considering the case of the appellant as well as the respondent, had directed reinstatement with continuity of service along with 50% backwages and the same was confirmed by the writ court. Therefore, we are of the opinion that the order passed by the writ court, need not be interfered with.

10. In view of the foregoing discussions, we find that there is no infirmity or illegality in the order dated 31.07.2023, passed by the writ court. Therefore, the Writ Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.



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[J.N.B.,J.] [P.D.B.,J.]
10.06.2024

Index: yes/no
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Note: Issue order copy
on 09.09.2024

J. NISHA BANU, J.
and
P.DHANABAL, J.

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