



WEB COPY



W.P.Nos.11867 of 2011 & 31090 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.Nos.11867 of 2011 & 31090 of 2016

and

M.P.No.1 of 2011

W.P.No.11867/2011:

The Management of Tamilnadu State
Transport Corporation (Villupuram) Ltd.,
Kancheepuram Region,
Represented by its General Manager.

... Petitioner

Vs.

1. The Presiding Officer,
First Additional Labour Court,
Chennai.

2. M.Gogulakrishanan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of certiorari to call for the records relating to I.D.No.55 of 2007 dated 24.08.2010 on the file of the first respondent herein and quash the same.

For Petitioner : Ms.S.Pavithra

For Respondents : Mr.M.Aswin for R2

Labour Court - R1



W.P.Nos.11867 of 2011 & 31090 of 2016

W.P.No.31090/2016:

WEB C... M.Gogulakrishnan

... Petitioner

Vs.

1. Tamil Nadu State Transport Corporation Ltd.,
Division III (Villupuram),
Rep. by its General Manager,
Kancheepuram.

2. The Presiding Officer,
First Additional Labour Court,
Chennai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of certiorari to call for the records relating to I.D.No.55 of 2007 dated 24.08.2010 on the file of the second respondent herein and quash the same.

For Petitioner : Mr.P.Rathanavel

For Respondents : Mr.S.Pavithra for R1

Labour Court - R2

COMMON ORDER

The petitioners have filed these writ petitions challenging the award of the I Additional Labour Court, Chennai dated 24.08.2010 made in I.D.No.55 of 2007.



W.P.Nos.11867 of 2011 & 31090 of 2016

2. The petitioner in W.P.No.31090 of 2016 was a Driver in the respondent Transport Corporation and during that course he caused an accident and in which an old woman died. Subsequent to that he was dismissed from service and that was challenged by him by way of preferring an Industrial Dispute. An award has been passed by the Labour Court on 24.08.2010 by partly allowing the dispute in respect of reinstatement by denying the back wages and all other benefits.

3. On perusal of the impugned award it is seen that the Labour Court has got convinced to set aside the order of dismissal because the petitioner was not given with any opportunity before passing the order of dismissal. It is further observed that no domestic enquiry has been conducted against him and hence the order of dismissal is in violation of the principles of natural justice. So far as the back wages is concerned, it is observed by the Labour Court that in the accident claim case filed by the dependants of the deceased the Corporation was liable to pay a hefty compensation of Rs.1,39,489/- and that was a loss to the corporation. By holding so the Labour Court has denied the relief of back wages and other service benefits to the petitioner by allowing the claim only in respect of reinstatement.



W.P.Nos.11867 of 2011 & 31090 of 2016

4. The learned counsel appearing for the petitioner / workman in

W.P.No.31090 of 2016 submitted that the petitioner is only a Casual Labour and hence subjecting him under the domestic enquiry will not arise. It is further submitted that because of his negligence, accident had occurred and that resulted in the liability to pay compensation settled at a sum of Rs.1,39,489/- by the Corporation to the legal heirs of the deceased. Despite the award has been passed in the year 2010, the petitioner had preferred to file this writ petition challenging the award only in the year 2016.

5. No doubt the petitioner has been appointed only through employment exchange and he was not regularized at the time of the accident. Even if the petitioner might not be subjected to domestic enquiry in case of any charges raised against them, the petitioner could have been at least served with notice for giving him an opportunity to offer his submission in respect of the allegation made against him. In the instant case the petitioner was not even put to notice and he has been dismissed abruptly.

6. It is submitted that the petitioner has been acquitted in a criminal case in C.C.No.33/1997 on the file of the Judicial Magistrate II, Arakkonam on 05.01.999. Had there been any enquiry, it would have been possible for



the petitioner to prove whether the negligence was on his side or not.

WEB COPY

7. Just because an accident had happened and in which the respondent Corporation has to bear the vicarious liability, it cannot be said in all cases that it was the loss caused due to the negligence of the employee. It assumes more relevance in the instant case in view of the fact that the petitioner was acquitted in the criminal case filed against him. Though the standard of proof required in the criminal case is not as same as that of the domestic enquiry, the fact remains that no enquiry has been conducted and not even a notice was given to him before dismissal.

8. In such case even if the petitioner is presumed to be a temporary employee, it is right for the Labour Court to record its conclusion that the order of dismissal has been made without following the principles of natural justice and it is illegal. Further, there is no acceptable proof to show that the accident has been caused only due to the negligence of the petitioner. Hence, I feel it is unreasonable to deny him the back wages for which he would have been entitled otherwise.



W.P.Nos.11867 of 2011 & 31090 of 2016

9. It appears that the petitioner has also not filed 17(b) petition during the pendency of this proceeding and that would only give a presumption that the petitioner is gainfully employed elsewhere. The petitioner being a Driver and whose driving license is still in force, can have all the possibility of getting an alternative employment and at this length of time, it may not be appropriate to consider his claim for full back wages. However in view of the reasons above cited, I feel the petitioner can be given with 50% of the back wages and to that effect, the award of the Labour Court can be modified.

10. In the result, these writ petitions are partly allowed and the award of the Labour Court dated 24.08.2010 made in I.D.No.55 of 2007 is modified only to the effect that 50% of the back wages is awarded to the petitioner in W.P.No.31090 of 2016. No costs. Connected miscellaneous petition is closed.

20.09.2024

Index : Yes/No

Neutral citation : Yes/No

Speaking Order/Non-Speaking Order

bkn



W.P.Nos.11867 of 2011 & 31090 of 2016

To:

WEB COPY

1. The Management of Tamilnadu State
Transport Corporation (Villupuram) Ltd.,
Kancheepuram Region,
Represented by its General Manager.
2. The Presiding Officer,
I Additional Labour Court,
Chennai.



WEB COPY



W.P.Nos.11867 of 2011 & 31090 of 2016

R.N.MANJULA, J.

bkn

W.P.Nos.11867 of 2011 & 31090 of 2016

20.09.2024