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W.P.No.39642 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.39642 of 2004

Tamilnadu State Transport
Corporation (Salem) Ltd.,
Salem
Rep. By its Managing Director

Vs

....Petitioner

1. The Presiding Officer,
Labour Court,
Salem.

2. S.Ganesan

....Responden

ts

PRAYER: Writ Petition is filed under Article 226 of Constitution of India,
pleased to issue a Writ of Certiorari to call for the records of the 1st
respondent in I.D.No.452 of 2002 dated 25.03.2004 and quash the same.

For Petitioner : Mr.R.Babu
Standing Counsel for TNSTC

For R2 : Mr.M.Selvam



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ORDER

The Writ Petition has been filed to call for the records of the 1st respondent in I.D.No452 of 2002 dated 25.03.2004 and quash the same.

2. The case of the petitioner is that, the 2nd respondent was working as a driver in the petitioner Corporation from 20.03.1987 and was working in Johnsonpet 3 Branch. The 2nd respondent was allotted duty in the bus bearing Reg.No.TN27/N/1238 proceeding to Salem from Bangalore. When the Bus was proceeding to Salem from Bangalore near Chinnaar Village at about 09.30.a.m., he caused an accident by hitting the bus against the lorry and two pedestrian young boys. One of the boys died on the spot and another boy suffered serious injuries and was admitted in the hospital as in-patient. The accident was happened due to the rash and negligent driving of the bus by the 2nd respondent. His act amounts to misconduct and therefore charge was framed under clause 19(1)(ad) of the standing orders of the petitioner corporation. Charge sheet dated 05.03.2002 was issued to him. Since, his explanation was not satisfactory, a domestic enquiry was conducted. The 2nd respondent participated in the domestic enquiry. Enquiry Officer submitted his report dated 06.04.2002 holding that the charge



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against the 2nd respondent was proved. The enquiry proceedings and the findings were sent to the 2nd respondent for offering his remarks vide order dated 16.04.2002. His explanation was not satisfactory and therefore, second show cause notice dated 02.05.2002 was sent to him seeking his explanation for proposed punishment. His explanation dated 14.05.2002 was not satisfactory. Taking into consideration of the entire facts and also the past records of the 2nd respondent, he was imposed punishment of dismissal from service. The 2nd respondent raised Industrial Dispute against the order in I.D.No.452 of 2002 challenging the order of dismissal. The learned Presiding Officer, Labour Court set aside the punishment and ordered to reinstate with continuity of service without backwages and other benefits. Therefore, this Writ Petition is filed.

3. The learned counsel for the petitioner further submitted that, 2nd respondent was responsible for the accident, wherein one young boy was killed on the spot and another suffered severe injuries. The Transport Corporation has to part with heavy amount towards the compensation claim. It is not the first accident committed by the 2nd respondent. He has involved in 30 misconducts including committing of accidents by his rash



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and negligent driving. He was imposed punishment 30 times for previous misconduct and this is the 31st misconduct. Taking into consideration his past conduct and the accident involved in this case, he was dismissed from service.

4. In response, the learned counsel for the 2nd respondent submitted that, 2nd respondent was not at all responsible for the accident. When he tried to avoid head on collision with a lorry which was coming from opposite direction, unfortunately, the accident had happened and that was the reason, Enquiry Officer found him guilty of the charges. The learned Presiding Officer, Labour Court has also disagreed with the findings of the Enquiry Officer and set aside the punishment of dismissal from service and directed for reinstatement with continuity of service but without back wages. Thus, he prays for dismissing this petition.

5. Considered the rival submissions and perused the records. From the facts narrated above, it is not in dispute that the 2nd respondent was driving the bus of the Tamilnadu State Transport Corporation (Salem) Ltd., on the ill fated day. It is the case of the 2nd respondent that, when he was



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proceeding to Salem from Bangalore near Chinnaar Village, a lorry was coming from opposite direction in a rash and negligent manner. To avoid head on collision, he swerved the bus towards left and that caused accident resulting in one death and other suffering serious injuries. The Enquiry Officer on going through the oral and documentary evidence produced during the course of the enquiry found that, 2nd respondent was responsible for the accident and therefore charge against the 2nd respondent was held as proved.

6. On a challenge in I.D.No.452 of 2002 against the order of dismissal, the learned Presiding Officer, Labour Court had found from the evidence available that 2nd respondent was not responsible for the accident and the accident had happened only when the 2nd respondent tried to avoid head on collision with the lorry which was coming from the opposite side. When there is evidence to conclude that 2nd respondent was not fully responsible for the accident, it is just and appropriate that the Presiding Officer, Labour Court had set aside the punishment of dismissal and ordered reinstatement with continuity of service but without back wages.



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7. With regard to the submission of learned counsel for the petitioner that 2nd respondent had earlier involved in 30 misconducts and imposed punishment, there is no records to show and to prove his previous misconducts and punishments. No separate charge was framed against the 2nd respondent in this regard. 2nd respondent was not given any opportunity to defend this allegation. Therefore, the claim that 2nd respondent had already involved in 30 misconducts cannot be considered now. It is now informed that, petitioner was paid 17-B wages till his date of superannuation on 31.05.2015.

8. For the reasons stated above, this Court finds that there is nothing illegality or irregularity in the order of the Presiding Officer, Labour Court in I.D.No.452 of 2002 dated 25.03.2004 setting aside the punishment of dismissal from service and ordering reinstatement with continuity of service but without back wages. Since, 2nd respondent had retired from service and attained age of superannuation on 31.05.2015, he may be notionally reinstated and necessary monetary and terminal benefits shall be given to him as per the rule within a period of three months from the date of receipt of copy of the order.



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9. With the above observations and directions, his Writ Petition is disposed of. No costs.

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Index :Yes/No
Internet:Yes/No
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G.CHANDRASEKHARAN, J

Sma

To

The Presiding Officer,
Labour Court,
Salem.

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