



W.P. Nos.24750 of 2013 and 23450 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. Nos.24750 of 2013 and 23450 of 2011
and W.M.P. No.1 of 2012

W.P. No.24750 of 2013 and W.M.P. No.1 of 2012

G. Ariyanathan S/o. Gopal ... Petitioner

VS.

1. The Management of Tamil Nadu
State Transport Corporation Limited,
Rengapuram, Vellore Region,
represented by its General Manager, Vellore.

2. The Presiding Officer,
Additional Labour Court, Vellore. ... Respondents.

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the award dated 20.07.2010 passed by the 2nd respondent in I.D. No.260 of 2004 and to quash the same in so far as depriving the petitioner, the entire backwages from the date of dismissal to the date of award and consequently to direct the 1st respondent to pay the petitioner full backwages, in addition to the relief of reinstatement with continuity of service and other attendant benefits already granted to him.



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For Petitioner : Mr.V. Ajoykhose & M. Muthupandian
For Respondents : Mr. S. Pavithra,
Standing Counsel for Tamil Nadu State
Transport Corporation [for R1]
R2 - Court.

W.P. No.23450 of 2011

The Management of Tamil Nadu
State Transport Corporation Limited,
Rengapuram, Vellore Region,
represented by its General Manager, Vellore. ... Petitioner.

vs.

1. The Presiding Officer,
Labour Court, Vellore.

2. G. Ariyanathan S/o. Gopi. ... Respondents.

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records relating to the I.D. No.260 of 2004 dated 20.07.2010 on the file of the 1st respondent and to quash the same.

For Petitioner : Mr. S. Pavithra,
Standing Counsel for Tamil Nadu State
Transport Corporation
For Respondents : R1 - Court.
Mr.V. Ajoy khose [for R2]

COMMON ORDER

These Writ Petitions have been filed by the petitioners challenging the order passed in I.D. No.260 of 2004 dated 20.07.2010 on the file of the Presiding Officer, Labour Court, Vellore, wherein the workman, who is the



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Writ petitioner in W.P.No.24750 of 2013 has raised an industrial dispute challenging the order of termination by the Management, who is the petitioner in W.P. No.23450 of 2011.

2. The short facts necessary to dispose of these Writ petitions are as follows:-

The petitioner in W.P. No.23450 of 2011 is the Management of the Tamil Nadu State Transport Corporation Limited, Rengapuram, Vellore Region and the Writ petitioner in W.P. No.24750 of 2013 is the bus driver worked in the Tamil Nadu State Transport Corporation, Vellore. When the driver of the bus bearing Registration No.TN23 N 1030 in Route No.422-E from Chennai to Tiruvannamalai was proceeding near the bye-pass road at Thiruperumpudur, the driver of the bus drove the bus rashly and negligently, dashed against the car, which was proceeding towards Chennai at bye-pass Road. As a result of which, two persons who travelled in the car bearing Registration No.TN07 C 7459 died and three others suffered grievous injuries. A case has been registered by the Sriperumbudur police in Cr. No.618 of 1998 for the offences under Sections 279, 337 and 304(A) of IPC. While so, the Management had issued a charge memo dated 24.11.1998 and the driver of the said bus was asked to offer his explanation. The driver of the bus had also offered his explanation denying his responsibility. Thereby,



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domestic enquiry was conducted and as per the findings of the enquiry officer, the Management passed an order of termination dated 13.10.1999 after considering the Show Cause Notice issued to the driver of the bus. The said termination order has been challenged by the driver of the bus through an I.D. No.260 of 2004 before the Presiding Officer, Additional Labour Court, Vellore as the conciliation proceedings ended in failure and the Labour Court has set aside the order of termination. Before the Labour court, no witnesses were examined on the side of driver of the bus and no exhibits were marked. However, on the side of Management, MW1 was examined and Ex.M.1 to Ex.M.12 were marked. After considering the evidences and documents, the Labour Court has partly allowed the industrial dispute and directed the Management to reinstate the driver of the bus in service with continuity of service and all other attendant benefits, however, declined to grant backwages. Now, the said order has been challenged by the Management through W.P. No.23450 of 2011 as against the order of reinstatement with continuity of service and all other attendant benefits. The workman / driver of the bus has filed Writ petition in W.P. No.24750 of 2013 challenging the denial of backwages.

3. The Writ petitioner in W.P. No.23450 of 2011 and the 1st respondent in W.P. No.24750 of 2013 is hereinafter called as 'Management'



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and the Writ petitioner in W.P. No.24750 of 2013 and the 2nd respondent in W.P. No.23450 of 2011 is hereinafter called as 'workman'.

4. Since both the Writ petitions are arising out of the same order, this Court heard both the petitions together and passed a common order.

5. The learned counsel appearing for the Management would contend that the workman was appointed as driver temporarily on daily wages basis on 11.07.1995 and he was working for 4 years. While so, when he was driving the bus bearing Registration No.TN23 N 1030 in Route No.422-E in Sriperumbudur Bypass road on 16.10.1998, the bus dashed against a car, which came in the opposite side due to the rash and negligent driving of the driver of the bus. Due to that accident, 2 persons died and three other suffered injuries. Therefore, a charge memo was issued to the driver on 24.11.1998 seeking his explanation and the driver also denied his responsibility in the explanation submitted by him. Thereafter, being not satisfied with the explanation of the driver, the Management ordered for domestic enquiry for the charges framed against the bus driver and the enquiry officer has submitted his report stating that the bus driver was the responsible for the accident. Thereafter, explanation was called for from



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him after serving the copy of the enquiry report and considering the explanation of the driver of the bus, the disciplinary authority has passed an order of termination from the service. The driver of the bus has challenged the said termination order by raising an industrial dispute before the Labour court as the conciliation proceedings failed. Thereby, the bus driver has filed this Writ petition to reinstate him into service with backwages, continuity of service and all other attendant benefits.

5.1. The learned counsel appearing for the Management would further submit that before the Labour Court, no any oral or documentary evidence adduced on the side of the driver of the bus. Per contra, the Management has examined one witness and marked 12 exhibits. The Labour Court failed to consider that the enquiry was conducted after giving opportunity to the driver of the bus and two persons died and three persons got injuries due to his rash and negligent driving. The Labour Court set aside the order of termination passed by the Management and allowed the Industrial Dispute and directed the Management to reinstate the driver into service with continuity of service and all other attendant benefits. However, the Labour Court declined to grant backwages to the driver of the bus. The Labour Court has taken an unsustainable view that the Management without issuing notice to the workman,



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framed charges and conducted domestic enquiry, terminated him from service and the same is in violation of principles of natural justice, whereas in the previous para referred about the enquiry proceedings. Therefore, the Labour Court has not applied its mind properly and thereby, the order passed by the Labour Court is liable to be set aside in respect of the reinstatement with continuity of service and all other attendant benefits. As far as the backwages are concerned, the driver of the bus has not stated nowhere that he was not gainfully employed during the period from the date of his service till the date of filing of this Writ petition. Further, there is a delay in filing this Writ petition. Therefore the award passed by the Labour Court in respect of denying the backwages is liable to be confirmed.

6. The learned counsel appearing for the workman / driver of the bus would contend that the driver of the bus drove the vehicle in a slow speed and correct manner only and no any rash and negligent manner of driving on the part of the driver. Per contra, the accident took place due to the rash and negligent driving of the car which came in the opposite side and dashed against the bus. Therefore, the driver of the bus is no way responsible for the accident. In the enquiry proceedings, no eye witness was examined and only the Staff from the Management were examined as witness. Even according to



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the Management, they appointed a fit person to visit the accident spot and to file a report and as per the report, there is negligence on the part of the driver of the bus. In the disciplinary proceedings, the person who was appointed by the Management for enquiry and to file a report, was not examined as witness and the person, who has no any nexus with the accident, was examined as witness and based on his evidence, the enquiry officer passed an erroneous order as if the charges were proved. The disciplinary authority also without applying the mind and without any materials, passed the termination order and the same was challenged through an industrial dispute and the Labour Court has passed an elaborate order. Though in the last para, the Labour Court observed that the Management without issuing notice, has framed charges, conducted domestic enquiry and terminated from service and the same is in violation of principles of natural justice, in the previous paragraphs, the Labour Court has categorically discussed about the oral and documentary evidences adduced by the witness and correctly directed the Management to reinstate the driver of the bus into service. However, the Labour Court failed to award backwages to the workman. Therefore, the order passed by the Labour Court in respect of refusing award of backwages is liable to be set aside and the driver of the bus is entitled for backwages as prayed for by him.



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7. Heard both sides and perused the entire materials available on record.

8. The Writ petitioner in W.P. No.24750 of 2011, who is the workman / driver of the bus, was working under the Tamil Nadu State Transport Corporation Management, who is the petitioner in W.P. No.23450 of 2011, has filed an industrial dispute before the Labour Court, Vellore challenging the termination order passed against him. It is an admitted fact that the driver was working under the Management as 'driver' and the accident took place on 16.10.1998. According to the Management, the accident took place due to the rash and negligent manner of driving by the driver of the bus. According to the driver of the bus, the accident took place due to the rash and negligent manner of driving by the driver of the car came in the opposite side.

9. As far as the disciplinary proceedings are concerned, it is an admitted fact that no any eye witness was examined and one person was examined as witness on the side of Management and 12 exhibits were marked. No oral or documentary evidences are adduced on the side of the workman / driver of the bus. It is admitted by the Management that the person, who was appointed for enquiry to enquire about the accident and to



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file an enquiry report, has filed a report before the Management and the report was also marked in the proceedings. However, the said person was not examined as witness and no any eye witness was examined. The Labour Court, in this context, discussed that in the previous enquiry proceedings, no opportunity was given to the driver and there are violations of principles of natural justice and thereby, the said order of termination was set aside by the Labour Court on 18.12.2009 and thereafter, the Management had given sufficient opportunity and one Natarajan, Section Officer was examined as witness. According to the evidence of the said Natarajan, there was rash and negligent manner of driving on the part of the driver of the bus. But the Traffic Inspector, was not examined as witness and no any passengers of the bus, who were present at the time of occurrence, were also not examined as witnesses. But one Natarajan, Section Officer, who is not a person present at the time of accident and not an eye witness to the accident, was examined. Therefore, the Labour court allowed the industrial dispute and directed the Management to reinstate into service with continuity of service and all other attendant benefits. Further declined to grant backwages to the driver / workman on the ground that no any pleading or evidence to show that the driver of the bus was not gainfully employed elsewhere during the time. Therefore, the initial burden is on the driver of the bus to prove that he was



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not gainfully employed elsewhere during termination period, but he has not proved and therefore, the Labour Court has declined to grant backwages.

10. As far as the reinstatement of service is concerned, the Labour Court has rightly held that earlier order was set aside by the Labour Court on 18.12.2009 and again sufficient opportunity was given to the Manager. Further, the Labour Court in the order categorically stated that after perusal of the entire records, it did not find any evidence against the driver of the bus that he was responsible for the accident and therefore, decided the case on merits.

11. It is an admitted fact that in the enquiry proceedings, no any of the passengers in the bus or the persons who were present in the place of occurrence, were examined as witnesses. Moreover, the Management itself appointed an officer to enquire into the accident and to file a report and that person was also not examined as witness and one Natarajan, who is noway connected to the accident, was examined as witness. Therefore, the order passed by the Labour Court is in order, though the Labour Court has observed in its last para that the respondent Management without issuing notice, framed charges and conducted domestic enquiry and the same is in violation of



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principles of natural justice, but in the previous paragraphs, categorically stated about the enquiry conducted by the Management and stated that sufficient opportunity was given by the Management to prove the charges made against the workman. Therefore, there is no any infirmity found in the order of the Labour Court.

12. Therefore, as discussed supra, this Court is of the opinion that these petitions have no merits and deserve to be dismissed. However, considering the nature and circumstances of the case, it is appropriate to direct the Management that though the workman is not entitled for backwages, he is entitled for Provident Fund contribution payable by the Management to the workman.

13. In the result, these Writ petitions are dismissed. The Management is directed to pay Provident Fund contributions payable by the Management to the Workman. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order/non-speaking order



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P.DHANABAL, J.,

mjs

To

The Presiding Officer, Labour Court, Vellore.

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