



W.P.No.26243 of 2015 & M.P.No.2 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.01.2024

Coram:

THE HONOURABLE Mr. JUSTICE N. SENTHILKUMAR

W.P.No.26243 of 2015
& M.P.No.2 of 2015

Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram,
Dharmapuri-5,
Rep. By its General Manager.

... Petitioner

/versus/

1. The Presiding Officer,
Labour Court,
Salem.

2. C.Palanisamy.

...Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari to call for the entire records passed by the 1st respondent in I.D.No.64 of 2011 dated 30.10.2014 and to quash the same.

For Petitioner	: Mr.M.Aswin
For R1	: Court
For R2	: Mr.R.Thamarai Selvan



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ORDER

This Writ Petition is filed by the Transport Corporation as against the 2nd respondent who was employed as a driver.

2. The petitioner was working as a driver from 04.08.2008. He was driving the bus of the petitioner corporation bearing Registration No.TN-29-N-1475 which was plying in the route of Dharmapuri to Pennagaram. On the date of occurrence i.e., 04.08.2008, the 2nd respondent was driving the bus from Dharmapuri to Pennagaram and while the bus nearing Erikarai, at about 7.15 hours, a motor cycle which was coming on the opposite dashed against the bus, out of which three persons who are on the two wheeler met with an major accident in which two male persons died on the spot and one female person died on the way to hospital.

3. The Transport Corporation/Petitioner issued a charge memo vide Standing Order under Clause 14(3)(c), dated 09.09.2008 served on the 2nd respondent. The 2nd respondent submitted his explanation on 09.01.2009 for the



charge memo.

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4. The petitioner/Transport Corporation was not satisfied with the explanation given by the 2nd respondent. A domestic enquiry was contemplated by following the principles of natural justice and following the procedure of the Standing Order for the domestic enquiry. The Enquiry Officer submitted his report for the charges levelled against the 2nd respondent and held that the charges were proved against him.

5. The second show cause notice was issued based on the enquiry findings which was served on the 2nd respondent on 22.06.2009 regarding the proposed punishment. The explanation was received from the 2nd respondent on 22.06.2009. Considering the explanation given by the 2nd respondent, the Enquiry Officer gave his finding of dismissal from service vide its order dated 11.09.2009.

6. The 2nd respondent challenge the dismissal order before the 1st respondent by raising a dispute in I.D.No.64/2011. This application according to the petitioner/Transport Corporation is belated since it was filed after a lapse of two years from the date of removal of service. According to the



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petitioner/Transport Corporation such a delay itself will show that the 2nd respondent was not serious enough with regard to the order passed by the petitioner/Transport Corporation. There was no proper explanation given by the 2nd respondent for the delay.

7. Per contra, the Learned Counsel for the 2nd respondent would contend that the criminal case as against the 2nd respondent was dropped because there was no negligence or carelessness on the part of the 2nd respondent. Therefore, the allegation of carelessness in the driving as alleged by the petitioner/corporation may not be appropriate.

8. The second contention is that while dropping the criminal proceedings, the department has placed before the Authority that the place of occurrence was a negotiating curve and if the driver/2nd respondent had driven it on the left hand side, the bus would have fallen and caused major accident and therefore, to avoid such an accident in the place of occurrence only, despite by slow down the bus and despite with minimum speed of driving the accident had taken place. The deceased along with three persons have driven the motor cycle



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and due to their negligence, the deceased persons dashed the bus.

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9. According to the 2nd respondent these factors were not considered by the Tribunal and in the domestic enquiry.

10. Countering such an argument, the learned counsel for the petitioner would contend that though the petitioner was appointed on 10.06.2008, this major accident has taken place on 04.08.2008. The date of appointment and the date of accident would show that within a couple of months a major accident had taken place where there was loss of three life's. If such a person like 2nd respondent is allowed to continue as a driver in the corporation, which will endanger the life of the common person who travel in the Transport Corporation.

11. This Court is of the considered view, that there is a substantial force in the arguments advanced by the Learned Counsel for the petitioner/Transport Corporation.

12. The Learned Counsel for the 2nd respondent drew the attention of



the finding given by the Tribunal that the domestic enquiry was not taken into consideration for the mode of accident which according to the 2nd respondent, its only at the instance of the vehicle driven by the two wheeler and the evidence before authority in the domestic enquiry would only show that, they heard the noise and none of the witness have deposed in the domestic enquiry that the cause of action was only because of the 2nd respondent.

13. In the absence of any direct evidence or material to show, that the cause of accident was only because of the 2nd respondent, such a removal from dismissal of service is contrary to the facts. Therefore, the 2nd respondent contends that the award of the Tribunal is appropriate and wholly justified.

14. The Court has evaluated the materials taken into consideration in the domestic enquiry on the contention raised by the Learned Counsel for the 2nd respondent. It is no doubt that one witness has deposed before the enquiry that they heard the noise and they saw that the accident has taken place and the two wheeler has fallen on the right side of the bus. This by itself will show that the accident has taken place only by the bus driven by the 2nd respondent. It is not the



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criminal case where a strict proof is required to establish the negligence of the 2nd respondent. It is proven fact that the accident which has taken place, is a busy road between Dharmapuri to Pennagaram. It is the duty of the 2nd respondent to drive the vehicle carefully while driving the Public Transport Corporation where a common people are travelling.

15. The finding given by the 1st respondent/Tribunal is against the material placed before the domestic enquiry and the imposition of punishment awarded as against the 2nd respondent is in accordance with the Standing order.

16. The learned Counsel for the 2nd respondent refer to the judgment of the Punjab and Haryana High Court in ***Union of India and others -vs- Virender Kumar***, in ***RSA-2753-2009 (O&M)***, dated 22.05.2023, where the Court has held that,

“20. From the facts on record, it is clear that the accident occurred in a mountain terrain and that too while negotiating a sharp U-turn and that too while driving a truck, which was over loaded. Sometimes, even an error of



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judgment, can lead to an accident and same cannot be regarded as rash and negligent driving of the driver. Even the mechanical failures in the vehicles do contribute in the accidents. Furthermore, place and situation of the accident also requires due consideration while adjudicating as to whether, the accident in the present case falls under the category 'rash and negligent driving'."

17. The Punjab and Haryana High Court has taken into consideration that the accident would take place even an error of judgment, which cannot be regarded as a rash and negligent driving of the driver. The case on hand is not a negotiating curve and it is not a truck.

18. The responsibility of the driver driving a Transport Corporation should be more conscious and vigilant while driving the bus which carrying more number of passengers and any accident will result in loss of life and limb. Dropping of a criminal case is different from conducting a domestic enquiry.

19. In a case of domestic enquiry, the Court is aware whether there is some material or more material. As far as the case is concerned, it is a case



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where the explanation given by the 2nd respondent is not satisfactory and the substantial material evidences and other material placed by the Petitioner/Transport Corporation before the domestic enquiry, categorically prove that the punishment awarded during the domestic enquiry is in accordance with the standing orders.

20. Therefore, the order passed by the 1st respondent/Labour Court, Salem, in I.D.No.64 of 2011 is set aside and consequently, the order passed by the petitioner/respondent in the domestic enquiry is upheld. Hence, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

19.01.2024

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking order
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N.SENTHILKUMAR, J.

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