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W.A.No.1854 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

**W.A.No.1854 of 2024
and
CMP.No.13350 of 2024**

The Managing Director,
The Tamil Nadu State Transport
Corporation Limited,
Villupuram 612 001.

... Appellant

Vs.

M.Gandhi

...Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters patent against
the order passed by this Court in W.P.No.17264/2022 dated 13.09.2023.

For Appellant : Mr.T.Chandrasekaran

For Respondent: Mr.R.Muralidharan



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J U D G M E N T

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

This writ petition is filed challenging the order passed in W.P.No.17264 of 2022 dated 13.09.2023, whereby, the learned Single Judge confirmed the award passed by the Labour court. The Labour court award is that the Management was directed to reinstate the employee/driver with continuity of service along with backwages.

2. The appellant is the Management and the respondent is an employee. The respondent joined in the services of the appellant-Transport Corporation as a Driver. The charge against the respondent is that due to rash and negligent driving, he caused an accident, resulting in death of two persons and injuries to the passengers and also caused damage to the bus. After conducting domestic inquiry, the respondent/employee was dismissed from service by order dated 21.07.2015.

3. The respondent raised I.D.No.27/2016, before the Labour Court, Cuddalore, seeking to reinstate him into service with continuity of service



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and backwages.

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4. After trial, the Labour Court, Cuddalore allowed the said I.D, directing the appellant/Management to reinstate the respondent into service with continuity of service and to pay backwages from the date of dismissal till the date of reinstatement.

5. Challenging the said award, the appellant/Transport Corporation has preferred W.P.No.17264/2022. This Court by order dated 13.09.2023, dismissed the said writ petition. Aggrieved by the said order, the appellant has preferred the present writ appeal.

6. The learned counsel appearing for the appellant submitted that due to the negligent act of the respondent, the accident occurred on 11.05.2013 which resulted in death of two persons and injuries to some passengers. After conducting the enquiry proceedings by following the principles of natural justice, it was found that the charges levelled against the respondent was proved; therefore, he was removed from service and it is not an act of victimization.



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7. The learned counsel for the appellant further submits that the Labour Court without properly appreciating the facts and evidence, ordered for reinstatement. In the writ petition, the learned Single Judge given a finding that domestic enquiry conducted by the Management is not fair and proper and confirmed the award of the Labour Court, which finding is perverse and needs to be interfered.

8. The learned counsel appearing for the respondent-driver submitted that the respondent was not furnished with the copies of the documents relied on by the Management; he was also not given opportunity to cross examine the Management witness; further day to day proceedings was also not furnished to the respondent; as such, the respondent was not provided with the opportunity to defend his case. The Labour Court, after analysing the evidence, has rightly held that termination of the respondent-driver is not proper and hence, directed the Management to reinstate the respondent into service with continuity of service and to pay backwages from the date of dismissal till the date of reinstatement.



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9. Heard both sides and perused the records.

10. The Labour Court, on appreciating the evidence of the learned counsel for the petitioner as well as the respondent, came to a conclusion that the respondent Management did not prove that the accident was caused due to the rash and negligent driving of the petitioner which resulted in the alleged accident. Taking into consideration that none of the passengers were examined to prove the charge against the petitioner, though it is the specific case of the respondent that independent witnesses were found in the scene of accident at the time of inspection done by the Investigating Officer of the respondent, then, the non-examination of those accident witnesses is fatal to the case of the respondent.

11. When the domestic proceedings was already decided as unfair, then, it is the duty of the respondent Corporation to prove that the respective charges against the petitioner, with proper and acceptable evidence before this Court. In spite of the Labour Court granting sufficient opportunity to the respondent Corporation, the respondent did not choose



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to examine any of the independent witnesses to prove the charge. The conductor of the bus also did not support the case of the respondent. Therefore, in the absence of substantial evidence to prove the charge of the petitioner workman that he was rash or negligent in committing the accident, the findings of the Enquiry official that the petitioner is negligent and guilt of committing misconduct is perverse and therefore, found that the termination is bad and set aside the same.

12. The petitioner was also not paid the subsistence allowance and the alleged findings that the charges against the petitioner was not proved, thereby setting aside the order of punishment and reinstating him with full backwages, which has been taken note by the Writ Court and the Writ Court, found that the interference of the Court was not necessary as the domestic enquiry was not conducted in a proper and fair manner, dismissed the petition filed by the respondent Management, which does not warrant any interference of this Court.

13. In the result, the Writ Appeal is dismissed. The appellant-Management is directed to implement the Award within three months



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from the date of receipt of a copy of this judgment. No costs.

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Consequently connected miscellaneous petition is closed.

(J.N.B,J.) (P.D.B., J.)
22.07.2024

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To

The Managing Director,
The Tamil Nadu State Transport
Corporation Limited,
Villupuram 612 001.



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and
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