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W.P.No.5181 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.5181 of 2014 &

M.P.No.1 of 2014

1. The Management,
Tamil Nadu State Transport Corporation [Villupuram] Ltd.,
Vellore Region, Bangalore Trunk Road,
Rangapuram, Vellore – 632 009.
Rep. by its General Manager
2. The Management,
Tamil Nadu State Transport Corporation [Villupuram] Ltd.,
Kancheepuram Region, No.12, Chekpet Nadu Street,
Kancheepuram – 631 501, Rep. by its General Manager
... Petitioners

Vs

1. The Presiding Officer,
III Additional Labour Court, Chennai.
2. The General Secretary,
M.G.R.Pokkuvarthu Kazhaga Uziyur Sangam,
No.52, Cooks Road, Chennai – 600 012.
... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari to call for the entire records of the order passed by the first respondent in Industrial Dispute No.364 of 2010 dated 13.12.2012 and to quash the same as illegal.



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For petitioners ... Mr.M.Aswin

For respondents ... Mr.S.T.Varadarajulu

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ORDER

This writ petition is filed seeking certiorari Mandamus for setting aside the Orders passed in I.D.No.364 of 2010 dated 13.12.2012.

2. Thiru A.Mohammed Ali was employed as an Assistant Tradesman in the the petitioner Tamil Nadu State Transport Corporation Villupuram Limited. He was assigned duty of maintaining the buses including carrying out repairs and rectifying faults and made the buses fit for running on the road. On 28.04.2002, the said workman Thiru A.Mohammed Ali along with another workman Thiru Raguraman was assigned duty of making fitness of the buses including vehicle No.TN 23 N 708. However, without properly asserting fitness of the vehicle, the said workman negligently certified the said vehicle and allowed it to ply on 29.04.2002 in route No.T-44 [A Service] from Pothaturpet to Tiruttani. The said vehicle met with an accident at Theckalur Yeri Karai and the front sharkle pin was found missing due to loose tact of the



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shackle in the front anchor with regard to the front side of the vehicle.

On account of which the vehicle was pulled aside and was capsized into 10 feet deep lake, wherein 7 passengers have received injuries including the driver and the conductor.

3. The Motor Vehicle Inspector and other officials of the corporation have made a preliminary assessment and report was prepared that the accident was taken place on account of poor maintenance of the vehicle and that the workman Thiru A.Mohammed Ali and another were responsible for the poor maintenance. A charge memo was issued to Thiru A.Mohammed Ali on 13.05.2002 and another, for which explanation was submitted by the workman on 21.05.2002. An enquiry Officer was appointed and enquiry was initiated and the workman have participated in the enquiry and on completion of enquiry, the enquiry officer held that the charges levelled against the workman are proved. Considering the gravity of the misconduct, the petitioner management has imposed a punishment of postponement of increment of the workman for a period of one year with cumulative effect and recovery of a sum of Rs.609/- and the suspension period was treated as leave.



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4. The second respondent being Trade Union has raised an Industrial Dispute on behalf of the workman including Thiru A.Mohammed Ali before the first respondent under section 2[K] of the Industrial Dispute Act, 1947 and the same was numbered as I.D.No.364 of 2010. After enquiry, the first respondent Industrial Tribunal passed an Award on 13.12.2012 setting aside the punishment imposed on the workman. Aggrieved by the same, the petitioner management has filed the writ petition.

5. It is submitted by the learned counsel appearing for the petitioners that in the departmental enquiry, there is no rule of evidence that the guilt against the workman has to be proved beyond all reasonable doubt and that if prima facie case is made out, the workman can be found guilty. It is submitted that the Labour Court has set aside the punishment imposed on the workman treating the proceedings as a criminal case. It is also submitted further that there is no dispute with the report of the Motor Vehicle Inspector and thereby interfered with the imposition of punishment on the ground that non examination of witnesses. It is further submitted that punishment imposed on the



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workman is minor in nature and that thereby should not have been interfered.

6. The learned counsel representing the workman has submitted that the finding of the Labour Court cannot be interfered with, as, after considering the entire material on record, the Labour Court has found that the Order of the enquiry officer imposing punishment of stoppage of one increment for a period of one year will not sustain.

7. Heard both sides. Perused the records in detail. There is no dispute in the facts that one Thiru A.Mohammed Ali along with another was entrusted for attending repairing works and to make the vehicle ply including bus bearing TN 23 N 708 and on 29.04.200, workman have given clearance and certificate for plying the bus on road. However, the bus met with an accident. The complaint given by the driver of the bus is to the effect that that the shackle pin in the front anchor was found missing, thereby, accident had taken place. The Motor Vehicle Inspector and Officers of the petitioners Department stated to have visited the scene of occurrence and gave a report, stating that on account of the negligence of the workman in maintaining the vehicle and giving the



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clearance and fitness certificate, accident has taken place. The Labour Court has observed in its Order that in FIR there is no mention that the accident has taken place on account of the negligence of maintenance. It is also observed further that after maintenance, the aforesaid bus met with an accident due to shackle pin was available.

8. After the bus was given clearance by the workman, i.e., Thiru A.Mohammed Ali and another, the bus was taken out with the passengers and the accident has taken place after 10 kilometers. In case if the shackle pin is not fixed, according to the respondents/workman, the bus will not even run for 10 kilometers. It is submitted, in contrary by the learned counsel representing the petitioner corporation that even if the shackle was not fixed, the bus will run for some time and later there is a possibility of meeting with an accident. Even according to the workman, there were ups and downs in the road and thereby, the driver was driving the vehicle slowly. If really there were ups and downs, twists and turns and if the road is not proper, if at all there is no shackle pin, the bus would not have run for 10 kilometers long. The Motor Vehicle Report is not placed before the Court. However, according to both sides, the Motor Vehicle Inspector has observed in the Motor Vehicle Report that



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there was no mechanical defect. That means, according to Motor Vehicle Inspector, there was no issue in respect of the shackle pin on the front side. The petitioner Corporation in the grounds of appeal has mentioned that the report of the Motor Vehicle Inspector cannot be found fault. That means the Motor Vehicle Inspector Report, which speaks that there was no mechanical defect is not disputed by the petitioner Corporation, which means that there was no complaint in respect of not having the shackle pin to the bus. This is one of the grounds of which the workman contention can be accepted.

9. After the bus was inspected and made ready by the workman, admittedly, the said bus was inspected by the Junior Engineer concerned before it was allowed to ply on the road. The said Engineer, whose duty is to cross check and verify as to whether the workman have properly made the bus ready in terms of mechanical aspects, is expected to supervise and give clearance only if there no mechanical defect and if the bus is fit to ply on the road and that he has given clearance. That means, at the time when the Junior Engineer has inspected the vehicle, it was in fit condition. If really there was any defect in the bus in respect of shackle pin, the said Junior Engineer would not have given clearance.



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Therefore, it cannot be said that the workman was negligent in giving clearance to run the bus.

10. Further, if at all the workman was negligent in maintenance, the Junior Engineer, who has inspected the vehicle was also negligent. However, admittedly, no disciplinary proceedings have been initiated against the Junior Engineer. If really, the workman are at fault, the Junior Engineer is also at fault. No reason has been given as to why disciplinary proceedings has not been initiated against the Junior Engineer.

11. There is no record that the workman have properly inspected the bus to see whether the shackle pin on the front side was fixed or not. There is no direct evidence in that context. What all the evidence placed before the enquiry officer is the report of the Officers of the petitioner's Corporation holding that there was a defect in the maintenance and complaint of the driver that the shackle pin was missing. May be the shackle pin which was fixed to the bus at the time of leaving the bus could have been loosened and must have fell during the course of running of the bus. There is a possibility of development of mechanical



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defect once the bus comes out of the bus depot in fit condition, for which the workman, who have given clearance for the fitness of the bus cannot be found fault. Merely because, the shackle pin is missing, the Department has assumed that the workman are responsible for negligently giving fitness certificate.

12. In view of the discussion made above, this Court is of the opinion that the respondent No.1, Labour Court has come to the just conclusion basing on the material placed before the Labour Court, that the conclusion of the Departmental enquiry of finding workman guilty is incorrect and thereby rightly set aside the punishment of stoppage of increment with cumulative effect.

13. This Court can interfere with the Order of the Labour Court when the finding of the Labour Court is patently perverse and shocks the conscience of this Court. In the case on hand, having gone through the Orders of the Labour Court, this Court is of the opinion that the Labour Court has passed reasoned Order, thereby, there are no grounds to interfere.



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14. In view of the discussion made above, this Writ Petition is dismissed. Consequently, connected miscellaneous petition is closed.

No costs.

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vrc

Index: Yes/No

Neutral Citation: Yes/No

To

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Dr.D.NAGARJUN, J

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