



Writ Petition No.25096 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>11/6/2024</i>
<i>Pronounced on</i>	<i>8/8/2024</i>

C O R A M

The Hon'ble Dr.Justice **D.NAGARJUN**

Writ Petition No.25096 of 2019

a n d

W.M.P.No.24667 of 2019

The Management
Tamil Nadu State Transport Corporation
(Villupuram) Limited
Thiruvallur Division
Thiruvallur.

...

Petitioner

Vs

S.K.Munusamy

...

Respondent

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records relating to the order dated 3/10/2018 passed by the I Additional Labour Court, Chennai in I.D.No.84 of 2018 and to quash the same.



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For petitioner ... Mr.M.Aswin

For respondent ... Mr.S.Ravi

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O R D E R

This writ petition is filed by the Tamil Nadu State Transport Corporation (Villupuram) Limited against the workman seeking to quash the order dated 3/10/2018 in I.D.No.84 of 2018 on the file of First Additional Labour Court, Chennai.

2. The respondent was working as a Driver in petitioner Corporation. On 28/1/2016, he has committed fatal accident near Veliagaram New Colony while he was driving a bus bearing Registration No.TN21M-0991 on Route No.T 9 for which he was suspended from service. The respondent has submitted a representation on 29/1/2016 on which suspension orders were revoked on 24/2/2016. However, the respondent was issued with a charge memo alleging misconduct of causing fatal accident by his rash and negligent driving. The respondent has replied on 1/6/2007 to the charge memo dated 28/3/2016. As the reply was not satisfactory, an enquiry was ordered by the petitioner Corporation and the same was conducted on



6/1/2017, wherein the respondent has participated. The Enquiry Officer has submitted his report on 10/2/2017 holding that charges levelled against the respondent is proved. The Management on considering the past record of the respondent has decided to dismiss the respondent from service. Accordingly a second show cause notice dated 15/3/2017 was issued to the respondent calling upon him as to why he shall not be dismissed from service. Though the respondent has submitted his explanation, it was found to be not satisfactory, thereby, final order has been passed on 2/6/2017, dismissing the respondent from service. Aggrieved by the same, respondent though preferred an appeal before the Managing Director, same was also dismissed.

3. The respondent has raised an Industrial Dispute before the Conciliation Officer, who after deliberations, filed a failure report on 7/2/2015. The respondent has filed I.D.No.84 of 2018 on the file of the I Additional Labour Court, Chennai, challenging the dismissal. The First Additional Labour Court, on conclusion of enquiry has passed the impugned award on 3/10/2018 modifying the punishment of dismissal to that of postponement of annual increment for three years with cumulative



effect and further directing the petitioner Corporation to reinstate the respondent in service with 50% of backwages. Aggrieved by the same, present writ petition is filed.

4. No counter affidavit is filed by the respondent.

5. Heard Mr.M.Aswin, learned counsel for the petitioner and Mr.S.Ravi, learned counsel for the respondent

6. It is submitted by the learned counsel for the petitioner that impugned order has been passed without considering the gravity of misconduct committed by the respondent, the labour Court has failed to consider that judgment of the criminal case acquitting the respondent will not in any way affect passing of the orders in the domestic enquiry, the finding of the labour Court that there was a contributory negligence on the part of the rider of two wheeler also is incorrect.

7. On going through the impugned order, it is clear that labour Court has in fact confirmed the finding of the Enquiry Officer that the respondent



has committed mis conduct by driving the crime vehicle in a rash and negligent manner on that fateful day. Though, it is observed by the labour Court that there is a contributory negligence on the part of the deceased as well still the respondent was not exonerated. The labour Court has simply modified the punishment from dismissal to that of the stoppage of postponement of annual increment for three years with cumulative effect.

8. The respondent workman against whom the finding has been given that he has committed misconduct has not chosen to challenge the award thereby, the said finding of the labour Court has become final. Since the awarded is challenged by the petitioner Corporation alone, it has to be examined as to whether modifying the punishment from dismissal to that of the postponement of increment for a period of three years with cumulative effect and for ordering of 50% of backwages with interest at the rate of 8% is perverse and whether it can be interfered with.

9. The labour Court has gone through the entire material in detail and has concluded that there is negligence on both the respondent as well as the deceased, thereby, the accident has taken place. In order to consider



whether the respondent has committed misconduct, the evidence placed before the Enquiry Officer by the Management both oral and documentary is required to be considered to appreciate whether on the fateful day the respondent was driving the vehicle in a rash and negligent manner. The past conduct of the respondent will not in any way help the Enquiry Officer in recording the finding in respect of the misconduct of the respondent. However, as rightly observed in case if there is a past record of similar accidents, same may be considered while imposing the punishment.

10. The labour Court, after recording the finding that the respondent has committed contributory negligence has went on to direct the petitioner Corporation to reinstate the respondent with 50% of backwages. Since the Enquiry Officer has found that the respondent was alone responsible for the accident basing on the said enquiry report, the petitioner Corporation has imposed the punishment of dismissal from service. However, as the labour Court has concluded that there was a contributory negligence. The gravity of the misconduct committed by the respondent was reduced and thereby, the labour Court has rightly modified the punishment of dismissal to that of postponing of increment for a period of three years with cumulative effect



which still affect the respondent financially through out his service.

Therefore, this part of the finding of the labour Court also cannot be interfered with.

11. Normally backwages are awarded when the workman is totally exonerated from alleged misconduct. As observed earlier, the respondent was not totally exonerated and he was found guilty of the contributory negligence. The labour Court had to direct the petitioner Corporation for reinstatement basing on the gravity of misconduct. The respondent has committed accident on 28/1/2016 and on the very same day, he was placed under suspension and suspension was revoked on 24/2/2016 and the impugned order was passed on 3/12/2018 with a direction to reinstate the petitioner. There is no record whether the respondent was reinstated basing on the directions of the labour Court. Therefore, though this Court is in agreement with most part of the impugned award as observed above, the respondent does not deserve for 50% of the backwages as ordered by the labour Court.



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12. In view of the above, writ petition is allowed in part. The impugned award dated 3/10/2018 made in I.D.No.84 of 2018 on the file of the First Additional Labour Court, Chennai has though confirmed, modified as under:-

The punishment of postponing of annual increment for a period of three years with cumulative effect shall continue along with reinstatement of the respondent. However, the direction of the labour Court to the petitioner Corporation to pay 50% of backwages is hereby set aside.

No costs. Consequently, the connected Miscellaneous Petition is closed.

8/8/2024

mvs.

Index: Yes/No

Neutral Citation: yes/No

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I Additional Labour Court, Chennai



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Dr.D.NAGARJUN,J

mvs.

**Pre-delivery order made in
W.P.No.25096 of 2019**

8/8/2024