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W.A.Nos.3218 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

Writ Appeal Nos.3218 of 2024
and CMP No.24899 of 2024

The Tamil Nadu State Transport Corporation
(Salem Ltd.,
Rep. by its Managing Director,
No.12, Ramakrishna Road,
Salem 636 997.

... Appellant

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2. R.Kothandan

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to allow the
Writ Appeal and set aside the order dated 2208.2023 in WP No.19706 of
2010.



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For Appellant : Mr.Anand Gopalan
For M/s. Agam Legal

Respondents : Mr.S.Arokia Mani Raj, for R2

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The Management is on Appeal aggrieved by the order of the learned Single Judge made in WP No.19706 of 2010 affirming the award of the Labour Court made in ID No.37 of 2006. The said industrial dispute was raised by the second respondent workman, who was employed as a driver in the appellant Corporation.

2. Challenge in the ID was to the order of termination made on 04.05.2000. The charge against the second respondent was that he was negligent in driving the bus. As a result of the negligence, the bus met with an accident in which one passenger was killed and 71 passengers were injured. The Labour Court found that though the accident had occurred as claimed by the Management, it was not fully due to the negligence of the driver viz. the second respondent. On the evidence of the conductor, who



was examined before the Labour Court, the Labour Court concluded that the bus was overcrowded and there were about 200 passengers in a bus at the time when it met with an accident. The conductor has also said that the vehicle was driven slowly and the accident occurred due to the mechanical defect caused by the overcrowding of the bus. The Labour Court had also faulted the Management for not examining the Motor Vehicle Inspector to prove the contrary.

3. On the above findings, the Labour Court set aside the punishment and granted reinstatement with 25% back wages. Upon challenge, the Writ Court concurred with the findings of the Labour Court. The Writ Court also took note of the law laid down by the Hon'ble Supreme Court in *State Bank of India and Others vs. Ramesh DinkarPunde*, reported in (2006) 7 SCC 212, on the scope of interference with the award of the Labour Court. In the result, the Writ Court dismissed the Writ petition.

4. We have heard Mr.Anand Gopalan, learned counsel appearing for M/s. Agam Legal, for the appellant and Mr.Arokia Mani Raj, learned



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counsel appearing for the second respondent/ workman.

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5. Mr.Anand Gopalan, learned counsel appearing for the appellant would contend that the Labour Court was not right in concluding that the driver was not negligent and he was not entirely responsible for the accident. He would also fault the Labour Court for having awarded 25% back wages for the entire period overlooking the fact that the second respondent was suffered an order of dismissal in May 2000 had approached the Labour Court only in the year 2006. Therefore, according to the learned counsel, the award of back wages for the period of delay for which the workman was solely responsible is not justified.

6. Contending contra, Mr.Arokia Mani Raj, learned counsel appearing for the second respondent/ workman would submit that the delay was occasioned because of the ill health of the workman and the proceedings happened prior to the amendment of Section 2(A) of the Industrial Disputes Act.

7. We have considered the rival submissions.



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8. We are unable to countenance the first submission of Mr. Anand Gopalan, on the negligence aspect. A bus with a maximum capacity of 56 passengers was over loaded at least up to 200 which definitely would be a cause for the accident. Even assuming that 200 passengers were not there in the bus, the fact that at least 71 passengers were injured would demonstrate that the bus was definitely overcrowded. Moreover, the law laid down by the Hon'ble Supreme Court in *State Bank of India and Others vs. Ramesh DinkarPunde, reported in (2006) 7 SCC 212*, prevent us from going into the evidence and re-appreciating it, to come to a different conclusion even if such conclusion is possible.

9. We find that on the evidence the Labour Court has come to a plausible conclusion and such conclusion cannot be interfered with in exercise of the power under Article 226 of the Constitution of India. However, we see some force in the contention of Mr.Anand Gopalan, on the delay. The dismissal order was passed on 04.05.2000. The workman, who had suffered the order of dismissal, approached the Tribunal only in January 2006 at least after the delay of six years. Therefore, the Tribunal must have taken into account the delay while deciding the award of back wages.



Moreover, we find that the Tribunal has not recorded a positive finding that the workman was not gainfully employed during that period. Unless there is such a finding, the award of back wages cannot be supported. However, we do not want to disturb the entire back wages as awarded by the Labour Court as well as the Writ Court. The award of back wages during the pendency of the proceedings cannot be put in issue.

10. We therefore find that the award requires a modification and the award is accordingly modified only to the extent that the workman will not be entitled to back wages between 04.05.2000 and 25.01.2006, the date on which the ID was filed. In other respects the award is sustained.

11. The Writ Appeal is partly allowed to the extent indicated above. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (C.KUMARAPPAN, J.)
14.11.2024

jv



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Index: No
Internet: Yes
Speaking order
Neutral Citation: No

To

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