



W.P(MD)No.21539 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.21539 of 2024

and

W.M.P.(MD)No.18202 of 2024

The General Manager,
Tamil Nadu State Transport Corporation,
Vannarpettai,
Tirunelveli.

... Petitioner

Vs

S.Velmurugan

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records pertaining to the impugned award passed by the Labour Court, Tirunelveli in I.D.No. 60 of 2018, dated 12.12.2022 and quash the same.

For Petitioner : Mr.K.Ramaiah



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ORDER

This writ petition is filed by the Tamil Nadu State Transport Corporation as against the award passed by the Labour Court, Tirunelveli in I.D.No.60 of 2018, dated 12.12.2022.

2.The above industrial dispute was taken by the Labour Court, Tirunelveli as per the Government Order in (D)No.249, dated 13.04.2008, Labour and Employment (B1) Department under Section 10(1)(c) and 10(1)(d) of the Industrial Dispute Act, 1947. The Government, vide the said order, has requested the Labour Court to decide the order of the Management, dated 02.11.2015, imposing a fine of Rs.750/- to the respondent/Velmurugan.

3.The respondent is the Driver of the petitioner Transport Corporation and was on duty from Tenkasi to Tirunelveli on 12.12.2013, the lorry bearing Registration No.TN 76 P 4257 hit on the Transport Corporation bus and on account of that the wind shield of the transport Corporation was damaged. Therefore, the petitioner Corporation made



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the respondent/Driver as responsible for this damage that he has caused this damage due to rash and negligence, has issued a show cause notice to the respondent on 30.12.2013 and imposed a punishment directing him to pay a sum of Rs.750/-. An Industrial Dispute was raised by the trade union and ultimately, vide Government Order D.No.249 Labour and Employment (B1) Department, dated 13.04.2018, the matter was referred to the Labour Court to decide whether the fine of Rs.750/- imposed on the respondent on 02.11.2015 is justifiable. The Labour Court has considered that the fine was imposed without conducting an enquiry and was also imposed after a period of sixty days from the date of accident. The accident said to have taken place on 12.12.2013. The show cause notice was issued on 30.12.2013. However, the Transport Corporation has imposed the punishment without considering the reply submitted by the respondent/ Driver. The petitioner Corporation took a stand that the respondent has not furnished any reply to the show cause notice, dated 30.12.2013. However, in Ex.M3, the reply offered by the respondent has been stated and a stand has been taken before the Labour Court that the respondent has failed to furnish any reply to the show cause notice. When the order disclose that a reply was submitted by the Driver denying the charges levelled as against him in the show cause notice, dated



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30.12.2013, then the Corporation ought to have conducted an enquiry. In this case, without conducting an enquiry, the fine of Rs.750/- was imposed on the petitioner that he is responsible for the damages that he has driven the vehicle with rash and negligence. The respondent Driver has taken a stand that it is due to the rash and negligence of the lorry driver this incident has taken place and therefore the lorry driver has also paid a sum of Rs.5000/- towards the damage by admitting his guilt, which was not considered by the Corporation. The Labour Court has found that for the show cause notice issued on 30.12.2013, the punishment was imposed on 02.11.2015, which was also signed and issued on the petitioner only on 17.02.2016 i.e., beyond the period of sixty days, which has been contemplated under Section 8 (6) of the Payment of Wages Act. The Labour Court has also found that the fine was imposed on the respondent Driver after a lapse of 692 days from the date of occurrence. The fine was also ordered to be recovered in installments, which is also against the provision under Section 8 (7) (8) of Payment of Wages Act. Ultimately, the Labour Court has found that there is a violation of the provision under Section 8(3), 8(6) and 8(7) of the Payment of Wages Act and allowed the industrial dispute and set aside the order of punishment, dated 02.11.2015 imposing the fine to the



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tune of Rs.750/- as against the respondent Driver. As against this award, dated 19.12.2022, the Management has preferred this writ petition.

4.The learned Counsel for the petitioner submits that the fine has been imposed based on the 12(3) Settlement under the ID Act. It is only 5% of the damage caused by the respondent, which is equivalent to a sum of Rs.750/- and the same is ordered to be recovered from his salary. The learned Counsel also submits for the charge memo and the show cause notice, dated 30.12.2013, the Driver has not submitted his explanation and therefore, the question of conducting an enquiry does not arise. The learned Counsel has also relied on the procedures formulated by the Corporation in the Standing Order with regard to the penalty for imposing minor penalties and submits that if the employee charged desires to be heard in person or if the disciplinary authority considers it is necessary to hear him as in person, he shall be heard by the disciplinary authority. In this case, the respondent Driver has not insisted his explanation to the show cause notice and has not necessitated for any domestic enquiry and therefore, the non-conduct of domestic enquiry is not an error. The learned Counsel also submits that the Industrial Dispute is not maintainable since no such application was made by the



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respondent Driver under Section 52 of the Payment of Wages Act, 1936.

Section 15 of the ID Act stipulates that every application must be presented within a period of twelve months, from the date of rejection and in this case, the industrial dispute has been raised after a period of 2.5 years. Therefore, on this ground also the industrial dispute cannot be sustained and the Labour Court ought to have rejected the industrial dispute raised by the respondent after the period of limitation.

5.This Court has considered the rival submissions made and also perused the materials placed on record.

6.There was an accident on 12.12.2013, in which, the wind shield of the petitioner Corporation bus driven by the respondent Driver, was damaged. The Driver took a plea that it is on account of the rash and negligence on the part of the other lorry driver, who colluded with the transport Corporation bus. The Driver has also collected a sum of Rs. 5,000/- as damages from the lorry Driver and has remitted the same with the petitioner Corporation. For this incident, a show cause notice was issued by the writ petitioner corporation on 30.12.2013. A stand has been taken by the transport Corporation that the driver has not submitted



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his explanation, however, the order of punishment which was marked as Ex.M3 reveals that the Driver of the bus has submitted an explanation without any date. This explanation appears to have been submitted well before the order of punishment, dated 02.11.2015. The order, dated 02.11.2015 was signed and issued to the respondent Driver only on 17.02.2016 i.e., after 692 days from the date of occurrence. Though the respondent has denied his responsibility for the accident in his explanation, the transport Corporation has not conducted any domestic enquiry.

7.The learned Counsel for the Corporation has relied on the Standing Orders on the procedures for imposing minor penalties. The same is extracted as under:

"8.Procedures for imposing minor penalties:

(1) No order imposing any of the minor penalties specified in clauses (a) to (c) of Rule 4 (1) shall be passed except after --

(a)the employee concerned is informed in writing of the imputations of misconduct or misbehaviour against him and given an opportunity to submit his written statement of defence or to make any representation he may wish to make, within a specified period not less than seven days from the date of service of the charge sheet;

(b)If the employee charged desires to be heard in person or if the Disciplinary Authority considers it necessary to hear him imperson, he shall be so heard by the



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Disciplinary Authority; and

(c) such defence statement or representation, if any, submitted by the employee in writing or made at the personal hearing is taken into consideration by the Disciplinary Authority before passing orders."

8.In this case, the punishment was imposed without conducting an enquiry as if the respondent Driver has not submitted any explanation for the show cause notice however, the punishment order reveals that an explanation was offered but the same was not considered . In the explanation, the Driver has also disputed the charges that it is not on his fault, the accident has taken place due to rash and negligence on the part of the lorry driver and also remitted a sum of Rs.5,000/- which was paid by the lorry Driver, who caused the accident. Those things have not been considered in the order of punishment by the petitioner Corporation. Moreover, the industrial dispute has been taken by the Labour Court on the reference made by the Government in Government Order D.No.249 Labour and Employment (B1) Department, dated 13.04.2018 and therefore, this Court is not inclined to accept the contention of the petitioner to assail the order of the Labour Court.



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9. Accordingly, this writ petition stands dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

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Internet : Yes
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