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W.P.No.5202 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.06.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.5202 of 2021
and WMP.No.5777 of 2021
and WMP.No.10139 of 2024

The General Manager
Tamil Nadu State Transport Corporation (Coimbatore) Ltd.,
No.37, Mettupalayam Road
Coimbatore - 641 043. ... Petitioner

Vs

A.Arumugam ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in ID>No.126 of 2017 on the file of the Principal Labour Court, Coimbatore, dated 30.07.2020 and quash the same.

For Petitioner : Mr.A.Sundaravadhanan

For Respondent : Mr.D.Soundarraaj

ORDER

Challenging the award passed by the Principal Labour Court, Coimbatore in I.D.No.126 of 2018, the Tamil Nadu State Transport



Corporation (Coimbatore) has filed the above writ petition seeking to quash the award.

2. The brief facts as set out in the award are as follows :

- a) The respondent-workman had joined the services of the petitioner-Management as driver on 19.05.2000 and had worked for over 16 years.
- b) On 22.04.2014, the respondent-workman was driving the bus bearing registration No.TN 39 N 0120 from Palani, and just before Achipettai bus stop, at about 6.30 p.m., the bus which was driven in a rash and negligent manner by the respondent-workman, had dashed against a two wheeler and had pulled the vehicle for about 50 ft., as a result of which, the rider of the two wheeler died on the spot and the pillion rider had sustained grievous injuries. A case was registered against the Transport Corporation before the Pollachi Taluk Police Station.
- c) On 23.05.2014, a charge memo was issued to the respondent-workman calling upon him to give an explanation as to why action should not be initiated against him. The explanation



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submitted by the workman was not found satisfactory by the Management. Therefore, the respondent initiated domestic enquiry against the respondent-workman by appointing an Enquiry Officer. The Enquiry Officer had conducted a trial and after affording sufficient opportunities to the workman, he had submitted his report on 15.12.2015. Based on the report of the enquiry officer, a show cause notice was issued to the workman.

- d) The respondent-workman raised his objection to the findings of the enquiry officer and had submitted his reply. The same was not found satisfactory by the petitioner-Management and hence, they issued a second show cause notice, to which, a reply was also submitted by the workman.
- e) Thereafter, taking into account the previous records of the respondent, the petitioner-Management had issued the order of dismissal on 23.09.2016. Following the order of dismissal, on the very same day, the Management had sent Form-T to the Joint Commissioner of Labour, Chennai enclosing one month salary that was payable to the respondent-workman.



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- f) On 07.10.2016, the Joint Commissioner of Labour had returned the file with an endorsement that no settlement was arrived between the Management and the workman.
- g) Be that as it may, the respondent-workman had raised an industrial dispute under Sec.2(A)(2) of the Industrial Dispute Act in I.D.No.126 of 2017 on the file of Principal Labour Court, Coimbatore, seeking to set aside the dismissal order and to reinstate him into service with continuity of service, backwages and other benefits.
- h) A preliminary enquiry was conducted by the Labour Court, during which time, the workman had marked Ext.W1 to Ext.W7 and the Management had marked Ext.M1 to Ext.M8. The Labour Court had framed preliminary issues and had passed a preliminary award on 14.10.2019 holding that the domestic enquiry conducted by the Management is vitiated and not valid in law and the same was set aside.
- i) Thereafter, the case was posted for further proceedings under Section 11A of the Industrial Dispute Act. The workman was examined as WW1 and on his side, Ext.W1 to Ext.W3 were



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marked. On the side of Management, one Jothimanikandan, the Inspector of the respondent-Corporation was examined as MW1 and he had marked Ext.M1 to Ext.M11.

- j) On appreciating the evidence before it and perusing the records, the Labour Court by award dated 30.07.2020 had allowed the petition in I.D.No.126/2017 filed by the workman, and eventually the dismissal order dated 23.09.2016 passed by the Management was set aside and the Management was directed to reinstate the workman into service with continuity of service within one month and also directed the Management to pay 25% backwages to the workman from the date of dismissal order along with other attendant benefits.

Aggrieved by the award, the petitioner-Management is before this Court.

3. It is the case of the petitioner-Management that for the alleged accident, the respondent-workman was tried before the Judicial Magistrate, Pollachi in C.C.No.17 of 2015 and by order dated 07.07.2028, the wormkam was acquitted only on account of the fact that the complainant was not able to state certain facts regarding the accident. Therefore, the acquittal of the



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respondent-workman before the judicial forum was only on account of giving the respondent the benefit of doubt. That apart, Ext.M2, the report of M.W.1 would clearly show that the petitioner-workman had driven the bus in such a rash manner which had resulted in the accident. It also disclosed that the two wheeler was pulled to a distance of 50 ft. away from the accident spot. Even assuming the plea of the workman that he had stopped the bus on the left hand side of the road and the car that followed the two wheeler had dashed against it and had thrown the two wheeler on the right side of the bus was true, then how the two wheeler would have been pulled 50 ft. away from the spot and caused death of the rider of the two wheeler. Therefore, the plea of the respondent-workman is not in consonance with the accident. It is also evident that the accident was purely on account of negligence on the part of the workman. This negligent act of the respondent-workman had brought down the reputation of the petitioner-Management. The respondent-workman had stated that the accident was only on account of the car having hit the two wheeler. He had however not lodged a complaint against the driver of the car. The Management would contend that respondent-workman had been punished for his earlier misconducts nearly 17 times and that earlier he had caused two accidents



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and despite a chance being given to him to rectify his mistake, he had not corrected himself and this is the third accident leading to a death. The petitioner -Management would also plead that the award has been passed solely on the basis that the criminal court had acquitted the workman. Further the petitioner would submit that the award directing it to pay 25% backwages was erroneous inasmuch as the petitioner has not pleaded or proved that he was not gainfully employed anywhere after his termination. Hence, he seeks to quash the impugned award.

4. The learned counsel appearing for the respondent-workman would submit that the petitioner-Management had failed to prove that the accident had taken place only on account of the negligence of the respondent-workman. He would also submit that the Labour Court had perused the deposition statement of MW1 and also the Ext.M2, FIR and had correctly held that the Management witness MW1, who is the author of Ext.M2, First Information Report had made contradictory statements regarding the manner in which the accident had taken place. The respondent counsel would further submit that on seeing the oncoming vehicle, the respondent-workmen had applied brakes and stopped the bus alongside the road. This statement



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of the respondent-workman has not been taken into account by MW1 and there is no explanation as to what prevented MW1 from examining the availability of brake marks and to verify and record the same in the MV report. The respondent had also admitted that he was acquitted before the criminal court.

5. Heard the learned counsel on either side.

6. The petitioner-Management had terminated the services of the respondent-workman only on the ground that by his act of negligence, the accident had taken place on 22.04.2014, which resulted in the death of the rider of a two wheeler and the pillion rider sustaining grievous injuries. This factum is sought to be substantiated by examining M.W.1 and marking exhibits viz., Ext.M2, First Information Report and Ext.M5, report of the Branch Manager. M.W.1 during his examination had deposed that the bus had dashed against the two wheeler and the rider of the two wheeler died on the spot, but in Ext.M2, he had reported that the respondent bus had dashed against the two wheeler and the rider of the two wheeler had fallen on a car which came in the same direction which it had dragged the two wheeler to a



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distance of about 55 ft., and sped away without stopping. Hence, it appears that the MW1 had made contradictory versions about the manner in which the accident had taken place. Therefore, the Labour Court is correct in not taking into consideration that the deposition of M.W.1. and his report Ext.M2 are contradictory, and that the petitioner-Management had not also taken into consideration the statement of the driver. Further the Management has not marked any documents viz., police FIR, photos, sketch etc., before the Labour Court to throw light on the materials evidencing how the accident had taken place.

7. Therefore, this Court holds that the Labour Court has rightly appreciated the records to come to the conclusion that the charges framed by the Management against the workman, had not been proved by the petitioner-Management. The petitioner-Corporation had argued that the respondent-workman had been punished for earlier misconduct and he had been given two chances by the Management, despite which, the workman had failed to correct his mistake and this being the third accident caused by him, he could not be continued in the petitioner-Corporation. The dismissal, therefore, is bad inasmuch as he has been punished for earlier wrongs and



not on account of the present accident alone.

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8. During the pendency of this writ petition, the respondent-workman has taken out an application seeking a direction to the petitioner-Management to pay him the last drawn salary of Rs.26,532/- per month from August 2016 till the date of disposal of the writ petition, in terms of 17(B) of the Industrial Disputes Act. No counter has been filed by the petitioner-Management in the said petition.

9. As regards the payment of backwages, the petitioner-Corporation has not raised any query as to whether the respondent was gainfully employed and the present argument is an after thought.

10. This Court draws reference to the judgment of the Hon'ble Supreme Court in ***Dena Ban Vs. Kiritikumar Patel*** reported in **1998 AIR SCW 98**. The learned Division Bench has observed that while exercising powers under Article 227 and 136 of the Constitution, an order cannot be passed denying the workman the benefit granted under Section 17-B of the Industrial Disputes Act. The Hon'ble Supreme Court has further held that



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under Section 17-B, the workman is entitled to the 'full wages last drawn' and not the "full wages which he would have drawn", since the words were used to mean the wages which the workman had drawn when he was in service. The object underlying the provision is to relieve a certain extent of hardship caused to the workman due to the delay in implementation of the award and at the same time, it should not result in causing great loss to the employer, and in the event of the employer succeeding in his case, he may not be in a position to recover the amounts from the workman.

11. Since the respondent-workman is entitled to, as a matter of right to the wages during the pendency of the writ petition as per Section 17-B of the Act, WMP.No.10130 of 2024 is allowed and a direction is issued to the petitioner-Management to pay him the wages as per Section 17-B of the Act, as prayed for.

12. With reference to the issue of backwages, there is no pleading or evidence to show that the workman was not gainfully employed. In the case in *M.L.Singha Vs Punjab National Bank* reported in AIR 2018 SC 4668, the Hon'ble Supreme Court had observed as follows :



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"In order to claim backwages, it is necessary for the appellant to plead and prove that he was not gainfully employed after his dismissal with evidence."

In the instant case there is no pleading or proof therefore the petitioner is not entitled to backwages.

13. The writ petition is therefore partly allowed. The order of the Principal Labour Court in I.D.No.126 of 2017 is hereby confirmed in so far as setting aside the order of the dismissal of the petitioner-Corporation dated 23.09.2016 and to direct the petitioner-Corporation to reinstate the respondent-workman with continuity of services. However, with respect to the backwages directed to be paid to the respondent-workman, the order is set aside. No costs. Consequently connected miscellaneous petition is closed.

12.06.2025

Index : Yes / No
Neutral Citation : Yes / No
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