



W.P.No.5141 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

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Kamalam

...Petitioner

Vs.

1. Managing Director,
Tamil Nadu Government Transport Corporation,
(Kumbakonam) Ltd, Thiruchirapalli – 1.
(Formerly known as Tamil Nadu Govt. Transport Corporation
Kumbakonam Division – 2, Ltd.)
Periyamilaguparai, Trichirappalli – 1.

2. The Presiding Officer,
The Labour Court,
Trichy.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the award dated 3.12.2009 made in I.D.No.2/2007, passed by the 2nd Respondent herein, quash the same and consequently directing the 1st respondent to pay arrears of back wages, attendant benefits and all other service benefits from the date of dismissal i.e., 06.03.2003 to 25.07.2013, the date of death of the petitioner's husband/ workman to the petitioner.



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For Petitioner : Mr.E.Vinoth Kumar

For Respondents : Mr.Murali Vinoth, for R1
R2 – Court

ORDER

This Writ Petition has been filed seeking quashment of the award dated 03.12.2009 made in I.D.No.2 of 2007 on the file of the 2nd respondent and for a consequential direction to the 1st respondent to pay the arrears of back wages, attendant benefits and all other service benefits from the date of dismissal ie., 06.03.2003 to 25.07.2013, the date of death of the petitioner's husband to the petitioner.

2. The brief facts necessary for filing of this Writ Petition are as follows:-

The petitioner's husband was employed as driver in the 1st respondent Transport Corporation. While so, on 12.05.2002, when the petitioner's husband was on duty in the bus operated between Jayamkondam and Trichy, he caused an accident by dashing against another bus coming from the opposite direction and in the said collision, a lady died on the spot and 32 other passengers were injured. Thereby,



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the 1st respondent transport Corporation issue a charge memo to the deceased employee/husband of the petitioner and sought for explanation.

As the explanation was not satisfactory, a domestic inquiry was ordered and after affording reasonable opportunity, the enquiry officer submitted a report stating that the charges were proved. Thereafter, the 1st respondent corporation issued a 2nd show cause notice and ultimately the deceased employee was dismissed from service. Challenging the said dismissal, the deceased employee/petitioner's husband raised an industrial dispute in ID No.2 of 2007 before the 2nd respondent and the Labour Court on an analysis of the evidence adduced before it, both oral and documentary, vide impugned award dated 03.12.2009 set aside the punishment of dismissal from service, however, ordered for reinstatement of the deceased employee as a fresh appointee, without continuity of service or back wages. Pursuant to which, though the deceased employee made several representation to the 1st respondent corporation seeking reinstatement with continuity of service, however, his representations remained unanswered. In the meantime, the employee breathed his last on 25.07.2013. Thereafter, the petitioner took up the cause of her husband and sent representations to the 1st respondent corporation seeking employment to her son on compassionate ground,



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however, the said representations were also not replied by the 1st respondent. Hence, the petitioner has come up with this Writ petition challenging the award dated 03.12.2009 passed by the Labour Court denying continuity of service, back wages and other attendant benefits to her husband.

3. Learned counsel for the petitioner vehemently contended that having ordered reinstatement, the Tribunal ought to have awarded continuity of service and back wages, since the deceased employee had rendered almost 11 years of service. Learned Counsel further submitted that the criminal case launched against the deceased employee/husband of the petitioner ended in acquittal. While such being the case, the 1st respondent Corporation ought to have taken into consideration the said order of acquittal passed by the Judicial Magistrate Court and considered the request of the deceased employee for reinstatement fixing his original seniority. Learned Counsel therefore submitted that it would suffice, if this Court issues necessary direction to the 1st respondent corporation to grant continuity of service, back wages and other attendant benefits. Accordingly, he prayed for appropriate orders.



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WEB COPY 4. Per contra, the learned Counsel appearing on behalf of the 1st respondent transport Corporation, submitted that the deceased employee had history of rash driving and he was punished on eight previous occasions and was awarded minor punishments. Despite the previous misconducts, the deceased employee had not learnt any lessons and has continued his rash driving. While so, on the fateful day, while the deceased employee tried to overtake the lorry that was going in front of him, in the said process he dashed against the incoming bus from the opposite direction and because of his rashness, a life was lost and 32 passengers have suffered various degrees of injuries and the corporation had also suffered huge loss. Learned counsel therefore submitted that, the award passed by the tribunal does not warrant any interference as the same was passed after careful consideration of the material documents placed before it. Accordingly, prayed to sustain the same and to dismiss this Writ petition.

5. Heard learned counsel on either side and perused the materials available on record.



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6. The short point to be decided in this Writ Petition is whether this Court can exercise its extraordinary jurisdiction available under Article 226 of the Constitution of India and grant the prayer sought for in this Writ Petition.

7. Learned Counsel for the petitioner was harping on the order of acquittal passed by the Judicial Magistrate, Trichy. On a perusal of the said order, this Court is of the view that, the said order was passed after a full-fledged trial and the deceased employee/petitioner's husband was not acquitted on the ground of failure of prosecution to prove the guilt of the employee beyond all reasonable doubts, however, the said the order of acquittal was meritorious. This Court is aware that the degree of proof in departmental proceedings is totally different from that of a criminal proceeding. In departmental proceedings, a person or an employee is said to have been done a misconduct, if there is preponderance of probabilities.

8. In the present case, the employee/petitioner's husband is no more and admittedly, he was the sole breadwinner of his family. The petitioner has stated in the affidavit filed in the support of this petition



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that her husband was awarded seven times for his best performance of the work and causing zero accident during the relevant period. At the same time, the 1st respondent corporation also produced document to show that the deceased employee was punished 8 times for minor misconducts. Both sides had not disputed the respective facts.

9. To strike the balance, more especially, since the employee is no more and he was the sole breadwinner of the family and also considering the fact that the Legal heir of the deceased employee was not granted employment on compassionate ground, this Court is inclined to modify the award passed by the Labour Court in the following terms.

10. The 1st respondent transport corporation is directed to pay the terminal benefits of the deceased employee from the date of dismissal, ie., 06.03.2003 till the date of passing of the award, i.e., 03.12.2009, treating the period as though the employee was in service. However, it is made clear that the deceased employee is not entitled for any back wages, however, is entitled for continuity of service for the purpose of calculating the terminal benefits. This order is passed only to enable the bereaved family to utilise the terminal benefits of deceased employee.



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11. Since the employee has not joined duty as ordered by the Labour Court and he was continuously insisting to reinstate him with continuity of service, this Court is not making any observations regarding back wages and other attendant benefits.

12. With the above observations and directions, this Writ petition stands allowed in part. No costs.

03.03.2025

skt

NCC : Yes / No
Index : Yes / No
Speaking order : Yes / No

To:

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M.DHANDAPANI, J.

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