

The General Manager Vs. the Presiding Officer and anr.

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Court : Chennai

Decided On : Dec-13-2011

Judge : K.Chandru, J.

Acts : Indian Penal Code (IPC) - Section 304(A); Industrial Disputes Act - Section 17-B

Appeal No. : W.P.(MD)No.148 of 2006 & W.P.(MD)No.429 of 2007

Appellant : The General Manager

Respondent : The Presiding Officer and anr.

Advocate for Def. : Mr.N.Edwin Jeyakumar, Adv.

Advocate for Pet/Ap. : Mr.Rajinish Pathyil, Adv.

Judgement :

W.P.(MD).No.148 of 2006 is filed by the management of the State owned Transport Corporation having its headquarters at Nagercoil. W.P.(MD).No.429 of 2007 is filed by the workman. In both the writ petitions challenge is made to a portion of the award made in I.D.No.177 of 1995 dated 30.08.2004 passed by the Labour Court, Thirunelveli.

2. By the impugned award, the Labour Court directed reinstatement of the workman with 25% backwages, but with service continuity. For the sake of

convenience, parties are referred as workman and the management as the case may be.

3. While the management was aggrieved a portion of the award relating to reinstatement with 25% backwages, the workman was aggrieved about the denial of backwages to the extent of 75%. The writ petition filed by the management was admitted on 05.01.2006. In the application in W.P.M.P.No.147 of 2006, this Court granted an interim stay and directed the management to deposit the entire amount ordered as per the award to the credit of the Labour Court, Tirunelveli in I.D.No.177 of 1985. Thereafter, the management filed W.P.M.P.No.1375 of 2006 seeking for extension of time to deposit the amount.

4. In the meanwhile the workman filed a vacate stay application in W.V.M.P.No.192 of 2006. The management once again filed W.P.M.P.No.3249 of 2006 for further extension of time for deposit. The Workman also filed W.P.M.P.No.2523 of 2006 seeking for a direction to pay last drawn wages of Rs.3,000/- in terms of Section 17-B of the Industrial Disputes Act. This Court by its order dated 25.04.2006 in WPMP No.2524 of 2005 on noticing that the amount has been deposited with the Labour Court, permitted the workman to withdraw 50% of the deposited amount from the Labour Court. Subsequently, in WPMP No.2523 of 2006, this Court permitted the workman to be paid Rs.1,280/- per month being the last drawn salary pending disposal of the writ petition.

5. The Workman filed an application to vacate the interim order for getting reinstated. This Court by an order dated 30.06.2010 refused to vacate the interim order after noticing that the workman had already been paid monthly salary in terms of Section 17-B of the Industrial Disputes Act. It was thereafter, the workman had filed the writ petition in W.P.(MD).No.429 of 2007 challenging the portion of the award denying him 75% of the backwages. In that writ petition notice of motion was ordered and that writ petition was allowed to be dismissed for default on 28.03.2007 for non payment of process fees.

6. Subsequently, the workman filed application in M.P.(MD) Nos.1 and 2 of 2009 seeking to condone the delay in filing the restoration petition and also to set aside the order dismissing the writ petition. Both the applications were allowed by orders

dated 30.04.2010. The workman's writ petition was directed to be tagged along with the writ petition filed by the management and hence, they were clubbed together and posted for final hearing.

7. The case of the workman was that he was engaged as a driver by the Thiruvalluvar Transport Corporation from the year 1984. After the formation of Nesamony Transport Corporation, the services were transferred to the Nesamony Corporation and was working in the Kuzhithurai Branch. On 18.02.1987, around 5.15 a.m. in the morning, when the workman was driving the bus in route number 103 from Eraummanthurai to Thoduvatti, the front wheel of the bus run over a woman sleeping on the side of the road.

8. A charge memo cum suspension order was given to the workman on 23.02.1987. The workman gave his explanation on 16.03.1987. It was also transpired that the woman succumbed to her injuries subsequently. Not satisfying with the explanation, an enquiry was conducted by the management. The enquiry officer found that the workman was guilty of the misconduct of rash and negligent driving road over and caused the death of a woman pedestrian and also for not informing the corporation about the accident.

9. After agreeing with the enquiry officer report, a second show cause notice was given on 20.11.1987,, as to why he should not be dismissed from services. The workman gave his explanation on 11.12.1987. Subsequently, by an order dated 30.12.1987, he was dismissed from service.

10. The petitioner was also proceeded with a criminal action since a case was registered in Crime Number 12 of 1987 at Nithravailai Police Station under Section 304(A) IPC. The criminal case, which was tried by the Judicial Magistrate No.II, Kuzhithurai, ended in his acquittal by the judgment dated 10.01.1991.

11. The workman filed a suit before the principal District Munsif Court challenging the order of dismissal. The suit was dismissed. He also filed a writ petition being W.P.No.10577 of 1991 before the Principal Bench. The said writ petition was also dismissed on the ground that he had an alternate remedy by way of raising an industrial dispute.

12. It was after the dismissal of the writ petition, the workman raised an industrial dispute before the Assistant Commissioner of Labour, Nagercoil. As no settlement was possible, the conciliation officer gave his failure report. On the strength of the failure report, the Workman filed a claim statement before the Labour Court, Tirunelveli dated 25.09.1995. His dispute was registered as I.D.No.177 of 1995 and notice was ordered to the management. The management filed a counter statement dated 02.01.1996.

13. Before the Labour Court, the Workman examined himself as WW1 and on his side two documents were filed and marked as Ex.W1 and W2. Ex.W2 is the judgment of the judicial Magistrate No.II, Kuzhithurai. On the side of the management, one Rajaram was examined as MW1 and on their side 12 documents were filed and marked as Ex.M1 to Ex.M12.

14. The Labour Court on the basis of the pleadings between the parties even framed two issues, a) whether the workman was entitled to get the relief claimed by him and b) if so what relief to which he was entitled to? The Labour Court found that since both the parties are let in oral evidence, it was unnecessary to go into the validity of the domestic enquiry. It also found that in Ex.M5- the accident report prepared by the management was not prepared on the basis of any direct witness and no witnesses who were found on the spot were also not examined.

15. Even MW1 in his cross-examination had fairly stated that he was neither examined in the domestic enquiry nor before the criminal court. He deposed about the suspicion caused when the workman brought the vehicle at 06.45 a.m. to the depot and left it there. He went out of the depot by stating that the spring rod was broken. Subsequent test revealed that there was no damage in the spring rod. In order to avoid any public outcry, he must have left the vehicle in the depot and left the place.

16. The Labour Court found these factors cannot be grounds to find whether the workman was negligent in driving the bus. The sketch and the accident report were prepared on the basis of the surmises. The topo map prepared by the Inspector was also on the basis of approximate measurements. The Labour Court found that it was not possible to hold that the charges are proved through legally

acceptable evidence.

17. The Labour Court referred to the evidence of the MW1 in the chief examination and did not agree that the past conduct of the workman will lead to a conclusion that he was negligent in his work. The fact that he was negligent in earlier occasion was not proved to the satisfaction of the Labour Court. The management witness also denied the knowledge about the outcome of the criminal case pending before the Judicial Magistrate No.II, Kuzhithurai.

18. The Labour Court also found that the Workman had also almost completed his service and he is at the tail end of his service and left with only four years of service. Even the defect in his vision was denied by the workman. For proving that there was an eye defect, no evidence was let in. Therefore, the Labour Court found that there was no satisfactory evidence for holding the workman guilty. At the same time, it found that since the management is a public Sector corporation, it is suffice the workman will be paid 25% of the backwages while ordering reinstatement and continuance of service. It is this award made in I.D.No.177 of 1995 dated 30.08.2004 has become a cause of concern of both the workman and the management.

19. The contention of the management was that Ex.M5 was a credible document and that has been discarded by the Labour Court. The statement of the Labour Court that MW1 was not an eyewitness also cannot be accepted. The preponderance of probability in this case will clearly show that the accident was due to the negligent driving of the workman. The past conduct was also not satisfactory.

20. On the other hand, the workman in his affidavit had stated that since there was no plea regarding gainful employment and the workman was out of service, the Labour Court was not justified in depriving 75% of the backwages.

21. The only question that has to be decided in this case is whether the impugned award suffers from any legal infirmities. The contention of the management that MW1 was an eyewitness is erroneous, because MW1 himself in his cross-examination had stated that he went to the spot after the accident and there was

also persons who might have seen the accident, but no statement was recorded from them. The Labour Court was right in stating that in the absence of any material before it, it cannot presume that the workman was always negligent.

22. In the present case, there is no contention by the management that the Labour Court was wrong in recording fresh evidence without setting aside the domestic enquiry, in which event the management would be bound to produce evidence to the satisfaction of the labour Court as it has practically given up its own domestic enquiry. Therefore, when the matter is before the Labour Court and the Labour Court refused to accept the evidence of MW1, who was admittedly not an eyewitness and not examined in the domestic enquiry as well as before the criminal Court, certainly it was open to the Labour Court to reject the evidence let in by the management. The standard of proof in the domestic enquiry conducted by the management and the evidence let in before the Labour Court cannot be weighed by a same yardstick.

23. In the present case, the Labour Court was well within its right to rely upon Ex.W2- judgment of the criminal Court, as an additional factor in holding the Workman not guilty of the misconduct. However, at the same time, the contention of the workman that he should be paid 100% wages also cannot be accepted, because the workman had an attempt before the Civil Court and thereafter, before the High Court and only after five years of his termination, he had moved the Labour Court for a conciliation. Therefore, the Labour Court was well within the right in granting a portion of the backwages, even though it held that the workman was not guilty of the misconduct.

24. In the light of the above, there is no case made out. Both writ petitions will stand dismissed. However, there will be no order as to costs. As the workman had already retired from service, the management is directed to compute backwages and the workman is at liberty to withdraw the balance lying in deposit and also claim the arrears directly from the management.