(2012) 10 MAD CK 0187

Madras High Court (Madurai Bench)

Case No: Writ Petition No. 6077 of 2009

Management, Tamil Nadu State Transport Corporation		APPELLANT
	Vs	
K. Ramraj		RESPONDENT

Date of Decision: Oct. 15, 2012

Acts Referred:

- Industrial Disputes Act, 1947 - Section 11A, 2A(2)

Citation: (2013) LabIC 692

Hon'ble Judges: S. Manikumar, J

Bench: Single Bench

Advocate: A.P. Muthu Pandian, for the Appellant; G. Kasinathadurai, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S. Manikumar, J.

Being aggrieved by the award made in I.D. No. 31 of 2001 dated 11.8.2000 of the Labour Court, Madurai directing reinstatement of the first respondent without back-wages, but with continuity of service from 18.3.2000, the Tamil Nadu State Transport Corporation (Madurai Division-V) Limited, Virudhunagar, has filed the present Writ Petition. According to the writ petitioner, the first respondent was employed as a driver from 15.2.1993 onwards in the Transport Corporation. On 7.5.1998, the first respondent caused an accident resulting in the death of a pedestrian, for which charges were levelled vide proceedings in bjh.c.J/22/365 dated 16.5.1998. The charges are as follows:--

(Vernacular matter omitted... Ed.)

On 7.5.1998, about 6.15 a.m., when the first respondent was driving a bus from Madras to Aruppukkottai and when, the said bus was plying just after Eliyarpathi

towards Aruppukkottai, it dashed against two mile stones and thereafter, ran over a pedestrian. Pursuant to the above charge memo, a domestic enquiry has been conducted. On the basis of the report, and after giving a second show cause notice, by order of the Transport Corporation dated 18.3.2000, the first respondent has been dismissed from service. Aggrieved against that order, the first respondent has raised an Industrial Dispute in I.D. No. 31 of 2001, before the Labour Court, Madurai/2nd respondent herein.

2. Upon hearing both sides and considering the evidence and materials available on record, the Labour Court, Madurai, came to the conclusion that the accident could have been avoided, had the first respondent been diligent and careful, while driving the bus at the time of occurrence. The Labour Court further held that the charge, as framed by the respondent that he was in dozed condition, while driving the bus, was not proved. The Labour Court held that the punishment awarded to the first respondent was disproportionate and consequently, set aside the same by its award dated 6.3.2008 and ordered reinstatement of the first respondent, but without back-wages. The Labour Court, at paragraph 10 of its award has categorically observed that had the driver/first respondent driven the bus cautiously, he could have avoided the accident. Paragraph 10 of the order reads as follows:--

3. Assailing the Award, reinstating the first respondent, Mr. A. P. Muthupandian, learned counsel for the writ petitioner, submitted that when the Labour Court has categorically arrived at the specific finding of negligence, the award directing reinstatement of the first respondent in the Transport Corporation with continuity of service ought not to have been made. According to the learned counsel for the Corporation, the punishment of dismissal cannot be said to be disproportionate to the gravity of the charge and he, therefore, submitted that the Labour Court has manifestly erred in directing reinstatement of the first respondent, driver. Hence, he has prayed to set aside the impugned award.

4. Per Contra, to sustain the impugned award in I.D. No. 31 of 2001 dated 6.3.2008, Mr. G. Kasinathadurai, learned counsel for the first respondent submitted that upon analysis of oral and documentary evidence, the Labour Court, Madurai has categorically found that the management has failed to prove the charge as framed. He also submitted that though earlier, the management has examined two eyewitnesses, who were present, at the accident spot, none of them has been examined in the domestic enquiry and that the said aspect has been taken note of, by the Labour Court, to arrive at the conclusion that in spite of an opportunity, the management has failed to prove the charge, as alleged against the first respondent. He also submitted that even the criminal case registered against the first respondent had not been pursued and closed.

5. Learned counsel for the first respondent further submitted that both the management witnesses examined in the domestic enquiry have failed to prove that the first respondent had driven the bus in dozed condition. According to the learned

counsel when the charge levelled against the petitioner is not proved, even in the domestic enquiry in the manner known to law, interference by the Labour Court cannot be termed as improper or illegal. The finding of the fact recorded by the Labour Court cannot be said to be perverse and that the award does not warrant any interference, at the hands of this Court. In these circumstances, he submitted that the impugned award does not require any intervention.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. The charge levelled against the first respondent is that on 7.5.1998, about 6.15 a.m., the first respondent was driving a bus from Madras to Aruppukkottai and after the place Eliyarpathi towards Aruppukkottai, it dashed against two mile stones and thereafter, the vehicle was dragged on to the right side of the road and it dashed against a pedestrian, killing him instantaneously. A perusal of the second show cause notice dated 23.2.2000 issued by the General Manager of the Tamil Nadu State Transport Corporation, Madurai Division shows that earlier, the petitioner has been inflicted with the following punishments:--

(Vernacular matter omitted... Ed.)

8. In the notice dated 23.2.2000, the General Manager, State Transport Corporation, Madurai Division had proposed to dismiss the first respondent. Not satisfied with the explanation dated 7.3.2000, the General Manager, the State Transport Corporation Ltd., Madurai Division, by order dated 13.3.2000, dismissed the first respondent from service.

9. Though the learned counsel for the first respondent has submitted that the criminal case registered against the first respondent has been dropped, perusal of the averments made in the industrial dispute raised u/s 2A (2) of the Industrial Disputes Act, 1947 shows that the criminal case in C.C. No. 306 of 1995 has been dismissed on 6.4.2000, on the ground that the police has not taken any steps to pursue the prosecution and prove the charge. Copy of the judgment of the Criminal Court has not been included in the typed papers filed along with the Writ Petition. However, it could be deduced from Paragraph No. 9 of the award that only on the ground that the police has not taken effective steps, the criminal case has been disposed of on 6.4.2010. Disposal of the criminal case was not on merits and that the acquittal was not honorable, i.e. on merits.

10. The main ground for assailing the correctness of the award in directing reinstatement of the first respondent with continuity of service and without back-wages is that, having found that the first respondent had not exercised due care and caution in driving the vehicle, which resulted in an accident, causing the death of a person, reinstatement ought not to have been ordered. Further perusal of the award indicates that though there were two eye-witnesses to the accident, none of them has been examined in the domestic enquiry. The officer who

conducted the field inspection has been examined as the management witness. The Labour Court, which considered the evidence of the parties, has observed that both the witnesses examined on behalf of the management, the officer who conducted the field inspection and the co-driver have let in categorical evidence pointing out that the first respondent had driven the vehicle in a dozed condition and caused the accident. But, the Labour Court has not believed the version of management, that the first respondent was in a dozed condition while driving the bus. However, the Labour Court has arrived at the categorical conclusion that had the first respondent driven the vehicle with due care and caution, he could have avoided the accident, causing the death of a pedestrian. The misconduct alleged against the petitioner is that at 6.15 a.m., on 7.5.1998, the first respondent had driven the vehicle, at a great speed and after hitting two mile stones, but the vehicle was dragged on to the right side of the road and that he could not control the vehicle, which resulted in dashing against a pedestrian, who was dragged along with the moving bus. Ultimately, he died on the spot. Even assuming that the manner of accident, as alleged in the charge memo has not been succinctly proved by letting in evidence that the first respondent was in a dozed condition, while driving the bus owned by the Transport Corporation, from the material on record, it could be inferred that the vehicle had been driven in an uncontrollable speed. Had the first respondent driven the vehicle in a controllable speed, certainly, after hitting the first mile stone, the speed of the vehicle could have been brought down and consequently, the driver could have stabilised the vehicle. From the evidence, it could be deduced that the first respondent was not in a position to control and steer the vehicle in proper direction, after hitting the mile stones. Needless to say that the mile stones would be, on the edge of a road. Thus, it is evident that he was not in a position to control the speed and bring the vehicle to halt, after hitting the mile stones, and the vehicle had gone over to the right side of the road, hitting a pedestrian, walking on the other side of the road, and killed him.

11. When the main duty or the function of the driver is to drive the vehicle cautiously, considering the safety of the passengers inside the bus and other vehicles on the road, pedestrians etc., and when there is a gross failure in not taking proper care and caution, and when failure of responsibility, on the part of the driver in not discharging his duties properly is apparent on the face of record and too in a case, where his negligent act had taken a way the life of a person, in such circumstances, this Court is of the view that it would be a misplaced sympathy to order for reinstatement. The duty and responsibility are correlative. In the case on hand, after hitting the mile stones, the vehicle in an uncontrollable speed had been dragged on to the opposite side of the road and it dashed against a person, killing him instantaneously.

12. In Metropolitan Transport Corporation Ltd. (Formerly known as Dr. Ambedkar Transport Corporation Ltd.) Vs. R. Tulasi, Saradha Rajasekaran and Deiviya, , a Division Bench of this Court, while considering the duty of the driver, at Paragraph

9, held as follows:

9. The precept of negligence means the failure to observe, for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The test of negligence lies in default to exercise the ordinary care and caution which is expected of a prudent man in the circumstances of a given case. The duty to exercise such care and caution including reasonable use of his faculties of sight and intelligence to observe and appreciate danger or threatened danger of injury is undoubtedly on the driver of an automobile. If he fails to do so and such failure is the proximate cause of the injury or death, he is guilty of negligence. In other words, the test is whether the driver could, by exercising normal diligence and caution, avert the accident. Negligence is the omission to do which a reasonable man, guided upon the considerations, which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. It is trite, the negligence is not a question of evidence; it is an inference to be drawn from proved facts. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which could be reasonably foreseen to be likely to cause physical injury to persons. The degree of care required, of course, depends upon the facts in each case vid M.N. Rajan and Others Vs. Konnali Khalid Haji and Another, .

13. Negligence is failure to observe, care and caution, for the protection of others. As regards the negligence, the Supreme Court in The Municipal Corporation of Greater Bombay Vs. Shri Laxman Iyer and Another, has held as follows:--

Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations, who ordinarily by reason of conduct of human affairs would do or be obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct.

14. On the aspect of negligence, in In Re: Parthasarathy, this Court held that the standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances. The behaviour of individuals is so incalculable in its variety, and the possible combination of circumstances giving rise to a negligence issue so infinite, that it has been found undesirable, if not impossible to formulate precise rules for all conceivable conduct, depending upon the moral qualities, knowledge, skill, physical, intellectual and emotional

characteristics, age etc. which vary from individual to individual. In order to ensure a high degree of individualization in handling of cases of negligence, law has adopted an abstract formula that of the reasonable man. In order to objectify the law''s abstractions like "care", "reasonableness" or "foreseeability" the man of ordinary prudence was invested as a model of the standard of conduct to which all men are required to conform. The driver is required to keep a reasonably careful look-out for other road-users, including, of course; pedestrians. In this connection there are the following three possibilities to be considered viz. that the pedestrian was (1) seen by the driver at a distance; (2) not seen until immediately before the impact; and (3) not seen until after the impact. Both as regards civil and criminal liability the rate of speed which will be considered dangerous varies with the nature, condition and use of the particular highway and the amount of traffic which actually is or may be expected to be on it. The driver of a vehicle must drive at a speed that will permit of his stopping or deflecting his course within the limits of his vision and if he strikes a person or object without seeing that person or object, he may in the circumstances be placed in the dilemma that either he was not keeping sufficient look-out or if he was keeping a look-out he was driving too fast, in view of the look-out that could be kept. It is the duty of the driver to drive his vehicle at a speed which will not imperil the safety of others using the road.

15. Even if there was no concrete evidence to prove the manner of the accident, as alleged in the charge memo, there is a clear finding of fact recorded by the Labour Court, as regards negligent driving in causing death of a pedestrian.

16. Once rash and negligence is found, the Labour Court ought to have first adverted to the question of necessity or desirability to interfere with the punishment and ought to have considered as to whether it requires interference. On the aspect of scope and power of the Labour Court u/s 11-A of the Industrial Disputes Act, 1947 in Mavji C. Lakum Vs. Central Bank of India, the Supreme Court held as follows:--

20. On this backdrop when we see unusually long judgment of the learned single Judge, it comes out that the learned single Judge held firstly that the Tribunal had exceeded its powers vested in it under the provisions of Section 11-A of the Industrial Disputes Act. The learned Judge, as regards, Section 11-A, after quoting the same, observed:

Though the Tribunal was equipped with the power to come to its own conclusion whether in a given case the imposition of punishment of discharge or dismissal from the service is justified. It is for that purpose that the Tribunal is authorized to go into the evidence that has been adduced before the inquiry Officer in details and find out whether the punishment of discharge or dismissal is commensurate with the nature of charges proved against the delinquent.

So far the finding of the learned single Judge appears to be correct. However, the whole thrust of the judgment has changed merely because the Industrial Tribunal

had found the inquiry to be fair and proper. The learned Judge seems to be of the opinion that if the inquiry is held to be fair and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that is not the correct law. Even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed. That does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power u/s 11-A has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical but there should be good reasons. In our opinion the reasons given by the Tribunal were correct and the treatment given by the Tribunal to the evidence was perfectly justified. The Tribunal committed no error in observing that for good long 30 years there was no complaint against the work of the appellant and that such a complaint suddenly surfaced only in the year 1982. The Tribunal was justified in appreciating the fact that the charges were not only trivial and were not so serious as to entail the extreme punishment of discharge. Here was the typical example where the evidence was of a most general nature and the charges were also not such as would have invited the extreme punishment. It was not as if the appellant had abused or had done any physical altercation with his superiors or colleagues. What was complained was of his absence on some days and his argumentative nature. Though the learned Judge had discussed all the principles regarding the exercise of powers u/s 11-A of the Industrial Disputes Act as also the doctrine of proportionality and the Wednesbury''s principles, we are afraid the learned Judge has not applied all these principles properly to the present case. The learned Judge has quoted extensively from the celebrated decision of The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, however, the learned Judges seems to have ignored the observations made in para 33 of that decision where it is observed that at p. 295 of LLJ:

33. The words "in the course of adjudication proceeds, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power of re-appraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has

now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The Tribunal is at liberty to consider not only whether the finding of misconduct recorded by an employer is correct but also to differ from the said finding if a proper case is made out.

We are surprised at the following observations of the learned Judge in para 7.1:

Nowhere during the course of the judgment the Tribunal appears to have followed the aforesaid guidelines or the Wednesbury test. When it was re-appreciating evidence and on the strength of it, was reaching to different conclusions and ultimately, it has substituted the punishment, it was incumbent upon it to follow aforesaid guidelines. It was only upon finding that the decision of the authority was illegal or that it was based on material not relevant or relevant material was not taken into consideration or that it was so unreasonable, that no prudent man could have reached to such decision or that it was disproportionate to the nature of the guilt held established so as to shock the judicial conscience, the Tribunal could have substituted the penalty. The entire text of award of the Tribunal does not indicate this.

We are unable to agree with these observations.

17. In LIC of India Vs. R. Suresh, the Supreme Court at Paragraph Nos. 31 and 32 held as follows:--

31. An Industrial Court in terms of Section 11-A of the Act exercises a discretionary jurisdiction. Indisputably, discretion must be exercised judiciously. It cannot be based on whims or caprice.

32. Indisputably again, the jurisdiction must be exercised having regard to all relevant factors in mind. In exercising such jurisdiction, the nature of the misconducts alleged, the conduct of the parties, the manner in which the enquiry proceeding had been conducted may be held to be relevant factors. A misconduct committed with an intention deserves the maximum punishment. Each case must be decided on its own facts. In given cases, even the doctrine of proportionality may be invoked.

18. In U.B. Gadhe and Others Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd., the Supreme Court, at Paragraphs 18 and 20 held as follows:

18. The High Court, as noted above, has not considered the case in the background of Section 11-A of the Act. u/s 11-A, wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case, whereas in the writ jurisdiction it is extremely limited.

20. Power and discretion conferred under the section needless to say have to be exercised judicially and judiciously. The court exercising such power and finding the misconduct to have been proved has to first advert to the question of necessity or

desirability to interfere with the punishment imposed and if the employer does not justify the same on the circumstances, thereafter to consider the relief that can be granted. There must be compelling reason to vary the punishment and it should not be done in a casual manner.

19. In Life Insurance Corporation of India Vs. R. Dhandapani, the Supreme Court at Paragraph Nos. 7 and 9 held as follows:--

7. It is not necessary to go into detail regarding the power exercisable u/s 11-A of the Act. The power under the said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of the management u/s 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words "disproportionate" or "grossly disproportionate" by itself will not be sufficient.

9. Though u/s 11-A, the Tribunal has the power to reduce the quantum of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law.

20. Anand Regional Co-op. Oil Seedsgrowers Union Ltd. Vs. Shaileshkumar Harshadbhai Shah, the Supreme Court at Paragraph Nos. 25 and 26 held as follows:--

25. It is now well settled that the industrial courts do not interfere with the quantum of punishment unless there exist sufficient reasons therefore. (See North Eastern Karnataka R.T. Corpn. Vs. Ashappa,), State of U.P. Vs. Sheo Shanker Lal Srivastava and Others, , A. Sudhakar Vs. Post Master General, Hyderabad and Another, Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.,) Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, and Chairman and M.D., Bharat Pet. Corpn. Ltd. and Others Vs. T.K. Raju,

26. A wrong test was applied herein by the Labour Court in observing "If the nature of the offence is grave he could have been inflicted punishment of stoppage of the increments". On what premise the said observations were made is not known.

21. As stated supra, a perusal of the second show cause notice dated 23.2.2000 issued by the General Manager of Transport Corporation shows that on 19.6.1994, while driving the bus bearing Regn. No. TN 59 N 0657 between Palani-Kovilpatti, the first respondent has caused an accident, resulting in the death of a female pedestrian, for which, he has been inflicted with a penalty of stoppage of increment for one year. There are other punishments. The past conduct of the first respondent

is also not satisfactory. While issuing a second show cause notice, the Tamil Nadu Transport Corporation (Madurai - V) Limited, dated 23.2.2000 has also brought to the notice of the first respondent of his previous conduct and called upon him to submit his explanation, as to why a severe punishment of dismissal, should not be inflicted. As rightly contended by the learned counsel for the State Transport Corporation, Madurai, when the Labour Court has categorically arrived at the conclusion of rash and negligence on the part of the first respondent in driving the bus, which resulted in an accident, causing the death of a pedestrian and having regard to the past conduct, the Labour Court ought not to have interfered with the penalty and in the aforesaid circumstances, this Court is not inclined to approve the directions issued by the Labour Court, for reinstatement in service, without back-wages and with continuity of service.

22. Violation of the principles of natural justice was not an issue before the Labour Court. In such circumstances, the Labour Court ought to have mainly addressed two issues, as to whether (i) there was perversity in the finding recorded in the domestic enquiry with reference to the charge on the available evidence, and (ii) proportionality of punishment. A driver of a public transport vehicle has to take care not only the passengers inside the bus but, he has a duty and responsibility to take care of the other road users, like the pedestrians and other moving vehicles also. Roads are not meant for the exclusive use of the transport corporation buses alone.

23. While interfering with the quantum of penalty, Section 11-A of the Industrial Disputes Act, 1947, mandates the Labour Court/Tribunal to consider the mitigating circumstances, i.e., the gravity of the charges, nature of duties and responsibility etc., length of service, proportionality of the punishment to the charge, desirability as to retention in service, and considering the factors to be taken into by the Tribunal/Labour Court, the case on hand, does not deserve, interference with the penalty awarded by the Corporation. If loss of life due to negligent driving a bus, is not a factor to be considered for imposing severe penalty of dismissal from service, then the powers of the Corporation to impose appropriate punishment would be crippled. Public interest is also one of the factors to be taken into consideration, for retention of an employee in service, while considering the proportionality of the punishment, along with other factors.

24. The Labour Court ought to have considered the gravity of the charge, the degree of guilt, duties and responsibilities of the driver, and other mitigating circumstances, while exercising its discretion, in interfering with the penalty and assigned proper reasons, as to why the punishment imposed by the management, required to be interfered with, and to clearly advert to the question of necessity or desirability to interfere with the punishment imposed by the employer and to state as to why it was shockingly disproportionate to the degree of guilt and the punishment inflicted by the management was excessive.

25. It is a settled principle of law that the quantum of punishment to be imposed, has to be decided by the employer and if there is a justification for the punishment imposed, the Tribunal or the Labour Court, as the case may be, should not ordinarily interfere. But when the punishment is disproportionate, and if no reasonable employer would have ever imposed such a punishment, the Tribunal or the Labour Court, as the case may be may interfere. In the absence of any plea and proof of victimization, or where the punishment is grossly excessive to the gravity of the charges, the Labour Court or the Tribunal, should not ordinarily interfere with the quantum of punishment. The Tribunal or the Labour Court, as the case may be, has no unlimited discretion to order for reinstatement, without justifying the grounds, as to why a lesser penalty ought to have been awarded by the employer.

26. Considering the specific finding recorded by the Labour Court on the aspect of negligence, and the facts in entirety, this Court is of the view that the discretion exercised by the Labour Court is not in conformity with the principles of law, laid down by the Apex Court and hence, for the reasons stated supra, this Court is inclined to accept the case of the Tamil Nadu State Transport Corporation (Madurai Division V) Limited, Virudhunagar. In the result, the award dated 6.3.2008 passed in I.D. No. 31 of 2001 by the second respondent/Labour Court, Madurai, is set aside. The Writ Petition is allowed. Connected Miscellaneous Petition is closed. No costs.