

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 04.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14618 of 2012 and  
M.P.No.1 of 2013

The Managing Director  
Tamil Nadu State Transport Corporation  
(Coimbatore Division II) Ltd.,

[ PETITIONER ]

Vs

1 The Joint Commissioner of Labour  
(Conciliation)  
D.M.S.Compound  
Chennai 600 006.

2. R.Sathiyamurthy

[RESPONDENTS]

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari , to call for the records made in approval petition No.84/2004 dated 14.07.2011 on the file of the first respondent and quash the same.

For Petitioner : Mr.S.Sairaman

For Respondents : Mr.R.Rajeswaran - R1  
Special Govt. Pleader

Mr.V.Ajoy Kohse - R2

O R D E R

Heard Mr.S.Sairam, learned Counsel appearing for the petitioner, Mr.R.Rajeswaran, learned Special Government Pleader appearing for the first respondent and Mr.V.Ajoy Kohse, learned counsel appearing for the second respondent. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.The Writ Petition has been filed by the Management of Tamil Nadu State Transport Corporation Limited and the challenge is to an order passed by the first respondent, the authority exercising the power under section 33 (2)(b) of the Industrial Disputes Act, 1947.

3.The undisputed facts are that the second respondent joined the petitioner/Management as a Driver on 14.12.1987. While he was driving the bus between Erode and Sathymangalam on 24.07.2003, an accident had occurred, resulting in loss of life of a lady. The second respondent was placed under suspension and after domestic enquiry was conducted, he was dismissed from service.

4.As the disputes were pending conciliation, the Management was compelled to take the approval of the first respondent and accordingly, they filed an Approval Petition under section 33(2) (b) of the Act on 29.01.2004, after complying with the conditions. The second respondent filed a counter to the said Petition. Apart from contesting the fairness of the domestic enquiry he had established the fact that the victim who died in the accident was a mentally retarded lady and the accident is attributable to the victim. The first respondent after taking into consideration of the submissions made on either side, took note of the evidence of one Elumalai who had spoken about the accident, wherein specifically it has been stated that the accident occurred due to the fault committed by the victim. It was pointed out by the first respondent that the domestic enquiry officer has recorded the deposition of the Management Witness Thiru E.Saravanan and took note of the same and proceeded to make an observation that the second respondent ought to have taken preventive steps to avoid the accident and he should have been more cautious. The first respondent therefore pointed out that having accepted that the victim was responsible for the accident, the domestic enquiry officer overstepped his brief and made an observation that the second respondent should have been more cautious and avoided the accident. Ultimately, the first respondent held that the punishment of dismissal was grossly disproportionate.

5.Though a submission is made that the past record of service of the second respondent was far from satisfactory, that appears to have not been the basis for dismissal from service and that aspect was not focused before the first respondent.

6.After hearing the learned counsel for the parties and perusing the materials placed on record, this Court is of the view that the order passed by the first respondent was justified in so far as it holds that the Management ought not to have dismissed the second respondent from service. However, this Court is not inclined to totally exonerate the second respondent, as the accident has caused the death of the lady said to be mentally challenged. Therefore, with a view to reform the second respondent and to make him more responsible while discharging his duties, this Court proposes to impose a punishment on the second respondent. It is stated that the

second respondent has already been reinstated in service, pending disposal of the Writ Petition, without prejudice to the rights of the Management.

7. In the light of the above, the Writ Petition is partly allowed and the impugned order is modified only in respect of the finding recorded by the Labour Court interfering with the punishment in its entirety. That portion alone is set aside and the petitioner/Management is directed to impose the punishment of stoppage of one increment for two years with cumulative effect. The above direction be complied with, by the petitioner Management within a period of four weeks from the date of receipt of a copy of this order and the second respondent is entitled to all other benefits pursuant to the above orders.

8. In the light of the above orders, the second respondent is permitted to withdraw the entire amount lying in deposit on the file of the first respondent to the credit of Approval Petition No. 84 of 2004 and that amount shall be adjusted as against the other monetary benefits which may accrue to the second respondent pursuant to the above order. In the event, the second respondent has withdrawn excess amount than his entitlement, the remaining amount shall be adjusted from his monthly salary in equal instalments. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Joint Commissioner of Labour  
(Conciliation)

D.M.S.Compound  
Chennai 600 006.

+1cc to Mr.V.Ajai Khose, Advocate, S.R.No.21212  
+1cc to Mr.S.Sairaman, Advocate, S.R.No.21131

W.P.No.14618 of 2012

sr(CO)  
srg(25/04/2016)