

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.08.2017

CORAM

THE HONOURABLE MR. JUSTICE. M.DHANDAPANI

W.P.No.24343 of 2003

State Express Transport Corporation,
Tamil Nadu Division I,
Rep. By its General Manager,
Formerly known as Thiruvalluvar
Transport Corporation,
Chennai-600 002.

... Petitioner

Vs

1. The Presiding Officer,
Industrial Tribunal,
Chennai.
2. K.Prabhakaran,
Driver,
Thiruvalluvar Transport Corporation,
Pondy.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records dated 03.03.1999 and made in petition No.61/96 on the file of Industrial Tribunal, Chennai, the 1st respondent herein and quash the same.

For Petitioner : Mr.P.Paramasivadosh for
M/s.G.Munirathinam

For Respondents : Mr.V.Ajoy Khose for R2

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records dated 03.03.1999 and made in petition No.61/96 on the file of Industrial Tribunal, Chennai, the 1st respondent herein and quash the same.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent.

3.For the sake of convenience, the petitioner-State Express Transport Corporation, Tamil Nadu Division I, Rep. By its

General Manager, Formerly known as Thiruvalluvar Transport Corporation, Chennai-600 002, would be hereinafter referred to as 'employer' and K.Prabhakaran, would be hereinafter referred to as 'employee'.

4.The brief facts of the case are as follows: The second respondent was appointed as a driver in the petitioner Corporation on 10.10.1980. On 19.05.1995, while he was working at Pondicherry Depot, he took the bus bearing Registration No.KH 080/TN 01/N0054 at Route No.304, plying from Myladuthurai to Chennai. When he was proceeding from Pondicherry to Tindivanam, near Marakkanam cross road, a cyclist along with a pillion rider came in the same direction on the left side of the road. Without waiting for crossing the bus, the cyclist suddenly turned from his right side to left side. The employee had driven the vehicle carefully and in order to avoid the accident, he applied sudden brake. However, in spite of efforts taken by the employee, the bus dashed against the cycle and both the cyclist and the pillion rider sustained injury and immediately they were admitted in the hospital and one among them died on 26.05.1990 in the Madras General Hospital.

5.FIR has been registered against the employee and subsequently, the employer issued a charge memo on 15.06.1995 to the employee. On 21.06.1995, the employee submitted his explanation to the above charge memo, denying the charges particularly the accident has happened only due to the negligence of the cyclist and he has also explained the efforts taken by him. Being not satisfied with the explanation given by the employee, on 30.06.1995, the employer ordered enquiry on the above charges and the enquiry was fixed on 17.07.1995. On the said date, the enquiry officer commenced his enquiry and marked eight exhibits on the side of the petitioner/employer. After full fledged enquiry, on 09.12.1995, the enquiry officer submitted his report and in turn, held that the charges levelled against the employee are proved. Accordingly, accepting the enquiry report, the petitioner/employer issued a second show cause notice on 06.02.1996. The second respondent/employee has also submitted his further explanation. Being not satisfied with the further explanation, the employee was dismissed from service on 26.06.1996. After the dismissal order, the petitioner/employer filed an approval petition No.61 of 1996 under Section 33(2)(b) of Industrial Disputes Act before the first Respondent/Labour Court. After a detailed enquiry, the first respondent/Labour Court did not approve the petition filed by the petitioner/employer and rejected the approval petition.

6.As against the rejection of the approval petition, the present writ petition has been filed by the petitioner/employer and subsequently, after the rejection of approval petition, the

second respondent was reinstated into service only in the year 2007. Till such time, the second respondent employee was paid 17B wages from 2004 till his retirement i.e. 31.07.2010.

7. Learned counsel for the petitioner would submit that without appreciation of facts and documents marked by the petitioner/employer, the approval petition was rejected on the ground that the findings of the enquiry officer were perverse. Without considering his past records, the First Respondent/labour Court rejected the approval petition as bad.

8. In support of his argument, learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of LALLA RAM V. D.C.M. CHEMICAL WORKS LTD., AND ANOTHER reported in (1978) 3 Supreme Court Cases 1, wherein paragraph - 12 reads as follows:

"12. The position that emerges from the above quoted decisions of this Court may be stated thus: In proceedings under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Prabesh Singh reported in (1965) 1 SCR 709: AIR 1964 SC 486: (1963) 1 LLJ 291 : 24FJR 406, Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar (1961) 1 LLJ 511: (1960-61) 19 FJR 15, Hind Construction & Engineering Co. Ltd., v. Their Workmen reported in (1965) 2 SCR 85, Workmen of Messrs. Firestone Tyre & Rubber Company of India (P) Ltd. v. Management reported in (1973) 3 SCR 587 and Easter Electric & Trading Co. v. Baldev Lal reported in 1975 Lab IC 1435: (1975) 4 SCC 684 that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate

punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

9. On perusal of the labour Court order, it is found that the petitioner/employer has not examined any eye witness to prove rash and negligent driving of the bus and one V. Varadharajan, who is working as Assistant Engineer was only examined as witness. Normally, the presumption is that the person who employed in the petitioner/Management can speak only in favour of the Management. We cannot draw adverse inference who are interested witnesses by the Management and admittedly, the Labour Court recording his finding that the enquiry officer also given a categorical finding that "I do not find any material to support an inference of his having been fast". The enquiry officer arrived at a conclusion that the negligence is only on the part of the employee based on no evidence. Therefore, the decision relied on by the petitioner is contrary and it is not applicable to the petitioner's case.

10. With regard to burden of proof on the employee that he was involved in the accident and the accident has happened only due to the negligence on the part of the employee, the learned counsel relied upon the decision in the case of CHOLAN ROADWAYS LTD. V. G. THIRUGNANASAMBANDAM reported in (2005) 3 SCC 241. The relevant portion reads as under:

"20. The Tribunal while exercising its jurisdiction under Section 33(2)(b) of the Industrial Disputes Act was required to bear in mind the aforementioned legal

principles. Furthermore, in a case of this nature the probative value of the evidence showing the extensive damages caused to the entire left side of the bus; the fact that the bus first hit the branches of a tamarind tree and then stopped at a distance of 81 ft. threfrom even after colliding with another bus coming from the front deserved serious consideration at the hands of the Tribunal. The nature of impact clearly demonstrates that the vehicle was being driven rashly or negligently.

26.The burden of proof was, therefore, on the respondent to prove that the vehicle was not being driven by him rashly or negligently."

11.On perusal of the above said judgment, the Hon'ble Apex Court held that the Tribunal while exercising its jurisdiction under Section 33(2) (b) of the Industrial Disputes Act was required to bear in mind the aforementioned legal principles and in case of this nature, the probative value of the evidence whether the vehicle came in a rash manner in order to hit the deceased person and fix the responsibility against the driver. To the effect, the burden of proof is on the part of the second respondent/driver to establish as there is no negligence while he was on duty.

12.On perusal of the judgments, it is clear that initially the burden lies upon the petitioner. Thereafter, the second respondent to disprove the charges against him. In this case, the petitioner/employer did not adduce any evidence to fix the responsibility and negligence against the second respondent/driver and the petitioner did not mark any documents and contrarily, the Labour Court found that there is no negligence on the part of the employee and the enquiry officer did not find any material to support an inference of his having been fast driving of the vehicle.

13.Learned counsel for the respondent would submit that when there is a categorical finding that the enquiry officer and the labour Court arrived at a conclusion that there is no prima facie evidence available in order to fix the negligence and responsibility against the employee and he relied upon the decision in the case of the General Manager, Metropolitan Transport Corporation, Chennai Limited, Pallavan Illam, Anna Salai, Chennai-600 002 v. D.Prasad and Others reported in 2015 - III- LLJ -686 (Mad), wherein it is held as follows:

13.There is no dispute that the finding of facts recorded by the Special Deputy Commissioner of Labour and confirmed by the learned Single Judge do not warrant

any interference, as the appellant had failed to produce any material to establish that the Inspector, who had submitted the report that the driver seat was intact, was cross examined, except self serving statement. There is also no material to establish that the management had made all endeavours to produce travelling passengers for examination before the enquiry committee. In that view of the matter, we have no hesitation to hold that the finding recorded by the learned Special Deputy Commissioner of Labour, confirmed by the learned Single Judge, is not faulted and deserves to be affirmed. The entire case of the management was on the basis of the report submitted by the Inspector that the driver seat was intact. The total scenario of the accident was not examined, which has been explained by the learned Single Judge at length. Thus, the management had failed to establish even a prima facie legal case necessitating dismissal of the employee. Consequently, the Special Deputy Commissioner of Labour was right in rejecting the approval petition, which was confirmed by the Single Judge in the writ petition.

14. It is evident to extract the decision of this Court in W.P.No.12954 of 1992 between Jeeva Transport Corporation v. Industrial Tribunal wherein paragraphs 5 and 6 reads as follows:

"5. The Tribunal has found, after discussing the evidence on record, that the evidence is totally insufficient to hold that the charges are proved. Thus, the tribunal has considered the evidence on record and come to the conclusion that the findings recorded by the domestic enquiry officer are perverse. That, the tribunal is entitled to do.

6. Reliance is placed on the judgment in Bharat Iron Works v. Bhagubhai, AIR 1976 SC 98. The Supreme Court held that there is no defect in procedure in a domestic enquiry against an employee, the Tribunal, while granting or withholding permission under Sec.33 does not sit as a court of appeal, weighing or re appreciating the evidence for itself but only examines the finding of the enquiry officer on the evidence in the domestic enquiry as it is, in order to find out either whether there is a prima facie case or if the findings are perverse. Thus, the Supreme Court has held that the Tribunal is entitled to consider whether the finding of the domestic enquiry officer is perverse or not. The judgment really does not in any way support the petitioner herein. In this case, the Tribunal has further taken into account all the relevant facts and come to the conclusion that the finding of the domestic enquiry officer is perverse."

15. On perusal of the above judgments, it is clear that all those judgments were rendered on the same issue. In the case on hand, the petitioner relied upon the judgment under Section 33 (2) (b) of the Industrial Disputes Act and all the applications were rejected and on perusal of the judgments, this Court arrived at a conclusion that the order of the authority dismissing the petition is not necessarily to be interfered. Accordingly, I do not find any error in the order passed by the Labour Court and however, with regard to payment of wage, it is necessary to interfere taking into consideration the petitioner was not in employment from 1996 to 2007. Though the petitioner was dismissed from service on 26.06.1996 and the Labour Court rejecting the approval petition on 03.03.1999, it would be appropriate that the petitioner is entitled to get the benefits without any backwages from 26.06.1996 to 03.03.1999 (date of rejection order).

16. With the above observations, the writ petition is allowed in part. The respondent is directed to settle the retirement benefits within a period of three months from the date of receipt of a copy of this order. Though the employee was retired from his service on 31.07.2010, due to pendency of the writ petition, he was not paid any terminal benefits. Accordingly, the petitioner is directed to settle the terminal benefits within a period of three months after taking into consideration except backwages from 26.06.1996 to 03.03.1999. No costs.

Sd/-
Asst. Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. The Presiding Officer,
Industrial Tribunal,
Chennai.

+1cc to Mr.V.Ajay Khose, Advocate Sr. 61800

W.P.No.24343 of 2003

MR (CO)
VR(13/10/2017)