

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.09.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

W.P. NO. 26402 OF 2016

AND

W.M.P. NOS. 22626 & 34178 OF 2018

The General Manager
Tamil Nadu State Express
Transport Corporation Ltd.
Pallavan Illam, Anna Salai
Chennai 600 002.

.. Petitioner

- Vs -

1. The Special Deputy Commissioner of Labour
DMS Compound, Chennai 600 006.

2. D.Ramasamy

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records on the file of the 1st respondent, made in A.A. No.21 of 2011 dated 5.12.2013 and quash the same.

For Petitioner : Mr. P.Kannan Kumar

For Respondents : Mr. S.Chellapandian for R-2

ORDER

The present petition has been filed by the petitioner to quash the order passed by the 1st respondent by which the approval petition has been rejected.

2. It is the case of the petitioner that the 2nd respondent, while serving as a driver-cum-conductor and driving the bus bearing No.TN-AO-966 on the route Chennai to Tirunelveli, committed an accident in which passengers were injured. Therefore, a domestic enquiry was initiated against him and the petitioner called for explanation from the 2nd respondent. Not satisfied with the explanation submitted, enquiry was initiated against the petitioner and the enquiry officer held that the charge levelled against the 2nd respondent was proved. Based on

the report submitted by the enquiry officer, the 2nd respondent was dismissed from service vide order dated 29.1.2011 along with one month salary.

2. Against the said order of dismissal, as there was a pending industrial dispute, an approval petition was filed before the appropriate authority. The Special Deputy Commissioner of Labour, on consideration of the approval petition, rejected the same, vide order dated 5.12.2013 on the ground that no prima facie case has been made out for dismissal based on the evidence adduced in the enquiry. Aggrieved against the said order, the present petition has been filed.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 2nd respondent and perused the materials available on record.

4. From the materials available on record, it is evident that the 2nd respondent was employed as driver-cum-conductor in the bus belonging to the petitioner herein. The approval authority has held that sufficient opportunity has not been granted to the workman to defend himself. Further, it is also noted by the approval authority that even notice regarding the enquiry has not been given to the workman which is evident from the records. In fine, finding has been recorded by the authority that the principles of natural justice has not been followed. The records also further reveal that for an accident during July, 2008, enquiry has been conducted only during March, 2010 and during that enquiry sufficient opportunity has not been granted to the workman to defend himself. Therefore, the approval authority has rejected the approval petition.

5. This Court has considered the entire materials available on record as also the order passed by the Deputy Commissioner of Labour. On consideration of the materials and the reasons assigned by the authority for rejecting the approval petition, this Court is of the considered view that the authority has rightly rejected the approval petition. The reasons assigned by the approval authority are just and reasonable and based on sound logic and reasoning and the same does not warrant any interference. Though the approval authority has rejected the approval petition with a direction to reinstate the workman with backwages, however, this Court is of the considered view that the workman though deserves to be reinstated in service, but not with backwages. With regard to backwages, there is no proof to show that the petitioner had not been gainfully employed.

6. Accordingly, this writ petition is disposed of with a direction to the petitioner/Management to reinstate the workman in service, however, without backwages, within a period of two

weeks from the date of receipt of a copy of this order.
Consequently, connected miscellaneous petitions are closed.
However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

GLN

To

The Special Deputy Commissioner of Labour
DMS Compound, Chennai 600 006.

+1 cc to Mr.Chellapandian, Advocate Sr.No.65671/18

W.P. NO.26402 OF 2016

SV(CO)
CSL/28.01.2019