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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) .No.199 of 2015

and

M.P. (MD) .No.1 of 2015

and

C.M.P. (MD) .No.7453 of 2018

The Management
Tamil Nadu State Transport
Corporation (Madurai Division-V) Ltd.,
Rep by its Managing Director,
6/377, Madurai Road,
Virudhunagar-626 001.

... Appellant/Petitioner

Vs.

1. The Joint Commissioner of Labour,
(Conciliation)
D.M.C.Compound,
Teynampet,
Chennai-600 006.

2. M.Thennarasu

...Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letter Patent, against the order passed by this Court in W.P.(MD).No.10735 of 2005 dated 01.07.2011.

Prayer in WP(MD)No. 10735 of 2005 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the entire records of the 1st respondent in his proceedings in Approval Petition No.365/2003 dated 12.2.2005, quash the same.

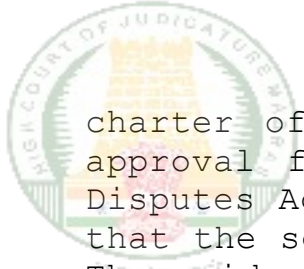
For Appellant	: Mr.A.P.Muthupandian
For R1	: Mr.A.K.Baskara Pandian Special Government Pleader
For R2	: Mr.S.Arunachalam

JUDGMENT

[Judgment of the Court was made by **M.M. SUNDRESH, J.**]

<https://hcservices.ecourts.gov.in/hcservices/>

The second respondent herein was working as a Driver of the appellant Corporation. As the industrial dispute relating to



charter of demand was pending, an application was filed seeking approval for dismissal under Section 33(2)(b) of the Industrial Disputes Act 1947. This was done, based upon the enquiry conducted that the second respondent was responsible for the fatal accident. The said approval petition was rejected on the ground that there is no legal evidence. The Conductor, who was traveling in the bus was not examined. Similarly no eye witness was examined. Challenging the same, the Writ Petition was filed. The learned single Judge by an elaborate order was pleased to dismiss the said writ petition and hence, the present writ appeal has been filed.

2.The learned counsel for the appellant would submit that though the principle of *res ipsa loquitur*, will have to be applied, the Labour Court exceeded its jurisdiction by retrieving the evidence. Therefore, the order of the learned Single Judge would further require interference. He would further submit that the rejection made by the Labour Court in not granting opportunity to the first respondent was also not a ground.

3.The learned counsel for the respondent would submit that a detailed order has been passed by both the first respondent as well as this Court. The scope of review under Article 226 of the constitution of India is very limited. He would further submit that the appellant Corporation has reinstated the second respondent, who has attained the age of superannuation. Therefore, no interference is required.

4.We have perused the order of the learned Single Judge. All the issues have been considered in detail. The learned Single Judge has rightly held that the appellant did not seek any opportunity before the enquiry officer to lead further evidence. Therefore, there is no question of allowing further evidence before the first respondent.

5.In the case on hand, admittedly, no eye witnesses were examined, except the person, who has investigated the accident alone was examined. The principle of *res ipsa loquitur* cannot be applicable in the said factum. When the findings of fact have been rendered by the first respondent and in the absence of any legal evidence, this Court cannot interfere with the exercise of power under Article 226 of the Constitution of India. Furthermore, the second respondent has already attained the age of superannuation. Thus, accordingly, we do not find any error warranting interference in the order of this Court. Hence, this appeal is dismissed. No costs. Consequently, the connected M.P and C.M.P are closed.

6.The retirement benefits if not paid, the same will have to be paid to the second respondent within a period of 12 weeks from the date of receipt of a copy of this order. The respondent Corporation shall calculate and pay the same as per the



judgment of the Division Bench, which has permitted the same to be paid in 12 equal monthly installments.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar(CS-II)

To

The Joint Commissioner of Labour,
(Conciliation)
D.M.C.Compound,
Teynampet,
Chennai-600 006.

+1cc to Mr.S.Arunachalam, Advocate Sr.No.92532

NS

VB/PM/SAR2/12.11.2018/3P/3C

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