



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.03.2018
Pronounced on : 04.06.2018

WEB COPY

CORAM :

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

WP (MD) No. 149 of 2015 and
MP (MD) No. 1 of 2015

The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Ltd, Dindigul Region,
Bye Pass Road, Collector Office Post,
Dindigul.

... Petitioner

Vs.

1. The Special Deputy Commissioner of Labour,
O/o. Commissioner of Labour, Chennai.

2. S. Devadoss

... 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 of the first respondent in his proceeding in Approval Petition No. 20/2011 dated 27.12.2012, quash the same.

For Petitioner : Mr. A. Jeyaram
For Respondents : Mr. V. Panneer Selvam for R2
R1 - Court

ORDER

Heard the learned counsel on either side.

2. The second respondent herein was employed as a Driver in the petitioner transport corporation. On 13.07.2009, when on duty, the second respondent caused a fatal accident. Therefore, disciplinary action was initiated against him. He was issued with a charge memo and suspended from service on 15.07.2009. The second respondent submitted his explanation. Enquiry was conducted. The enquiry report dated 27.02.2010 found that the charges levelled against the second respondent stood proved. The second show cause notice dated 23.03.2010 was issued. The second respondent gave his explanation. But, the same was not found to be acceptable. He was dismissed from service on 13.01.2011. The petitioner corporation sought approval by filing a petition under Section 33(2)(b) of the Industrial Disputes Act, 1947. By order dated 27.12.2012, the first respondent declined the same. Questioning the order of rejection,

this writ petition has been filed.

3. This Court went through the contents of the impugned order of rejection passed by the first respondent. It is seen that the employer namely, the petitioner herein marked only three documents. They are Ex.P1, Ex.P2 and Ex.P3. Ex.P1 is a copy of the cheque for a month salary issued to the second respondent herein. Ex.P2 is a copy of the postal receipt. Ex.P3 is a copy of the dismissal order. Except this, nothing else was marked before the first respondent. The first respondent therefore fell handicapped. It has been observed in the impugned order that the management did not even bother to furnish the enquiry report and the evidentiary material. The first respondent has been called upon to discharge the statutory function set out under Section 33(2) of the Industrial Disputes Act, 1947.

4. It has been held by the Hon'ble Supreme Court that this is a quasi-judicial function and that a speaking order must be passed. The first respondent will have to see if the principles of natural justice have been complied with. The first respondent's jurisdiction is of course limited. But, it is obliged to consider whether a prima facie case has been established against the employee. This has been laid down in the decision of the Hon'ble Supreme Court reported in **1976 SCC (1) 518 (Bharat Iron Works vs Bhagubhai Balubhai Patel & Ors)**. In this case, the Tribunal was disabled from discharging its function. Because, the management omitted to file the enquiry report as well as the evidence on record. Since the relevant material which alone would have enabled the first respondent to discharge the statutory function cast on it were not made available, the first respondent rightly declined to grant approval. The decision of the first respondent cannot be faulted. There is no merit in this writ petition. It stands dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Special Deputy Commissioner of Labour,
O/o. Commissioner of Labour, Chennai.

+ 1 CC TO Mr.V.PANNEER SELVAM, ADVOCATE IN SR No. 66744

SKM

TE/SV-MMS/SAR-2 : 18/06/2018 : 2P/3C