

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.16334 of 2010

A.Seeyalan

..Petitioner

Vs

1.The General Manager
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Kancheepuram.

2.The Branch Manager
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Chengalpet-2 Depot,
Chengalpet.

Respondents.

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a writ of Certiorari to call for the records of the 1st respondent herein in Ku.No.317/2817/Sa12/TNSTC/08 dated 30.06.2010, and quash the same.

For Petitioner : Mr.S.V.Karthikieyan

For Respondents : Mr.T.Chandrasekaran, for R1&R2.

ORDER

This writ petition has been filed challenging the order of dismissal passed against the writ petitioner by the first respondent dated 30.06.2010.

2. The facts of the case are that (a) the petitioner joined service in the respondent corporation as driver on 13.11.1991. While the petitioner was on duty and driving the bus bearing Registration No.TN-21-N-1134 in Route No.212B/H and proceeding from Chengalpet to Kancheepuram, near Kannikapuram bus stop, the petitioner, on seeing six persons standing and quarrelling on the road side, drove the vehicle in a careful manner. But one person moved towards the road and even though the petitioner applied brake, front left corner of the vehicle hit the person and he sustained injury. The petitioner reported the accident to the Chengalpet Taluk Police station. But the injured person who

was taken to Kancheepuram Hospital, died.

(b) In respect of the above accident, the petitioner was suspended from service on 28.07.2008 and also been served with notice dated 01.08.2008 calling for his explanation. The petitioner's explanation in this regard was accepted and the order of suspension was revoked on 02.09.2008.

(c) Though the petitioner's suspension order was revoked, the petitioner was not allotted duty for more than six months and he was denied service.

(d) The petitioner was served with a charge memo by the first respondent, by proceedings dated 21.6.2009. An enquiry was conducted, wherein, the petitioner denied the charges framed against him. The petitioner deposed that real fact would be revealed only if the criminal case registered for the occurrence is concluded. However, the Enquiry Officer, concluded the enquiry as "Charges Proved."

(e) Even thereafter, the petitioner was called for explanation on 29.03.2010 and the petitioner given the explanation on 05.05.2010. The first respondent, without considering the said explanation, passed final order on 30.06.2010, imposing the punishment of 'removal from service' which is the impugned order herein.

3. The petitioner has raised the following contentions in this writ petition that the impugned order is a non-speaking order and no proper opportunity has been granted to the petitioner before passing the impugned order of removal from service.

4. The learned counsel appearing for the respondents submits that as against the impugned order passed by the respondent-corporation, the petitioner could raise an Industrial Dispute under Section 2-A(2) of the Industrial Disputes Act, 1947. But the writ petitioner without exhausting the said remedy, approached this court. Therefore, the petitioner may be directed to raise an industrial dispute before the appropriate forum.

5. After hearing the submissions of the learned counsel on either side, this court is of the opinion that the contention of the learned counsel for the respondents is found acceptable. The writ petitioner, without exhausting the remedy provided under Industrial Disputes Act, 1947, approached this court, as against the impugned order of removal from service. He further submits that on account of non compliance with the provisions of Section 2A(2) of the I.D.Act, 1947, liberty may be given to the workman to raise his dispute again.

6. Section 2-A of the Industrial Disputes Act, provides that "where any employer discharges, dismisses, retrenches or otherwise terminated the services of any individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

7. Section 2-A(2) of the Act states that the workman has to firstly file an application to the Conciliation Officer of the appropriate government for conciliation of the dispute and he can file his claim before the court after the expiry of 45 days from the date of his moving/filing of above said application to the Conciliation Officer.

8. After coming into force of Section 2-A(2) of the I.D.Act, w.e.f. 15.09.2010, by virtue of the provisions of the Industrial Disputes Act, (Amendment) Act, 2010 (24 of 2010), (Central/Parliamentary Enactment) direct industrial dispute can be filed in the Labour Court or the Tribunal only in compliance with the provisions of Section 2-A(2) of the I.D.Act, 1947 and not otherwise.

9. In this case, there is no averment that the petitioner approached the Labour Court by filing an application before the Conciliation Officer for conciliation of the dispute. As such, for want of compliance with the provisions of Section 2A(2) of the I.D.Act, 1947, the writ petition is liable to be dismissed, as not maintainable.

10. In view of the above discussion, this court has no hesitation to reject the writ petition on the ground that the writ petition is not maintainable due to non compliance with the provisions of the I.D.Act. Accordingly, the writ petition is dismissed with liberty to the writ petitioner to raise the industrial dispute with regard to the impugned order of dismissal before the appropriate forum, within four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-IV)

// True Copy//

Sub Assistant Registrar

nvsri

To

1.The General Manager
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Kancheepuram.

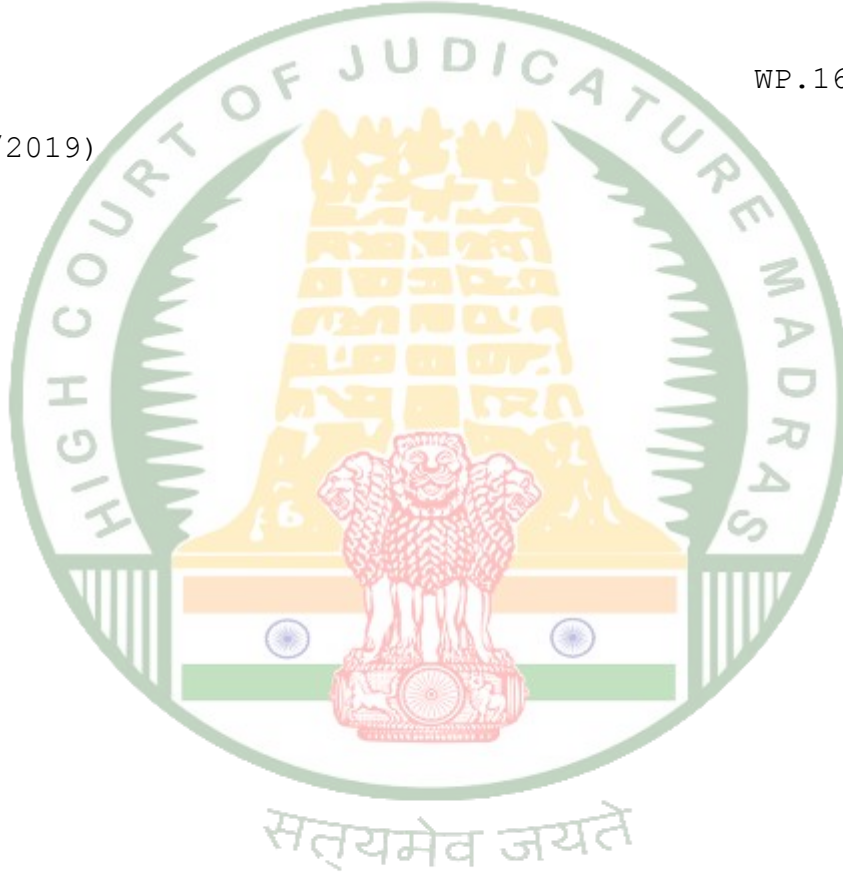
2.The Branch Manager
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Chengalpet-2 Depot, Chengalpet.

+lcc to Mr.T.Chandraswekaran, Advocate, SR.No.88812.

+lcc to Mr.S.V.Karthikeyan, Advocate, SR.No.88881.

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RR(CO)
CSR(10/12/2019)



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