

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 29.08.2019

CORAM
THE HON'BLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.26279 of 2014

The Management
Tamil Nadu State Express Transport Corporation
Pallavan Salai, Chennai 600 002.
Rep.by its General Manager

... Petitioner

-Vs-

1.C.Balasubramaniam

2.The Special Joint Commissioner of Labour,
DMS Compound, Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of Certiorari to call for the records passed by the 2nd respondent in A.P.No.521 of 2012 dated 05.12.2013 and to quash the same.

For Petitioner: Ms.Rajeni Ramadoss

For Respondents: Mrs.A.Jayanthi for R1
Mr.H.Imthiaz Ahamed for R2

O R D E R

The writ petition has been filed by the Management challenging the order of the authority dated 05.12.2013 in rejecting the Approval Petition on the ground that the punishment is harsh. The Apex Court has laid down the principles under which the appropriate authority can go into the issue with regard to any Approval Petition filed by the Management, in the case of Lala Ram Vs. DCM reported in AIR 1978 SC 1004.

2. In the present case on hand all the five issues as contemplated in the decision (cited supra) have been decided in favour of the Management. However the authority has informed that the punishment imposed is harsh. The Supreme Court in a decision reported in 2016 (16) SCC 16 has observed as follows:

11. Applying the principle stated in Cholan Roadways Ltd. [Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241 : 2005 SCC (L&S) 395] , what needs to be considered is about the probative value of the

evidence showing the extensive damage caused to the bus as well as motorcar; the fatal injuries caused to several persons resulting in death; and that the nature of impact raises an inference that the bus was driven by the respondent rashly or negligently. The material relied on by the Department during the enquiry supported the fact that the respondent was driving the vehicle at the relevant time and because of the high speed of his vehicle the impact was so severe that the two vehicles were extensively damaged and the passengers travelling in the vehicle suffered fatal injuries resulting in death of five persons on the spot and four persons in the hospital besides the injuries to nine persons. These facts stood established from the material relied on by the Department, as a result of which the doctrine of res ipsa loquitur came into play and the burden shifted on the respondent who was in control of the bus to establish that the accident did not happen on account of any negligence on his part. Neither the Commissioner nor the High Court considered the matter on that basis nor posed unto themselves the correct question which was relevant for deciding the application under Section 33 (2) (b). On the other hand, the order of punishment dated 13-10-2003, ex facie, reveals that the report of the enquiry officer referring to the relevant material established the factum and the nature of accident warranting an inference that the respondent had driven the bus rashly and negligently. Further, the observation in the unreported decision of the Division Bench of the same High Court was not relevant for deciding the application under Section 33(2) (b). Significantly, the order of punishment also adverts to the past history of the respondent indicative of the respondent having faced similar departmental action on thirty-two occasions, including for having committed minor as well as fatal accidents while performing his duty.

12. In our opinion, the Commissioner exceeded his jurisdiction in reappreciating the evidence adduced before the enquiry officer and in substituting his own judgment to that of the disciplinary authority. It was not a case of no legal evidence produced during the enquiry by the Department in relation to the charges framed against the respondent. Whether the decision of the disciplinary authority of dismissing the respondent is just and proper, could be assailed by the respondent in appropriate proceedings. Considering the fact that there was adequate material produced in the departmental enquiry evidencing that fatal accident was caused by the respondent while driving the vehicle on duty, the burden

to prove that the accident happened due to some other cause than his own negligence was on the respondent. The doctrine of res ipsa loquitur squarely applies to the fact situation in the present case.

13. Ordinarily, we would have remitted the matter back to the Commissioner for consideration afresh, but as the matter is pending for a long time and as we are satisfied that in the fact situation of the present case approval to the order of punishment passed by the appellant against the respondent should have been granted, we allow the application under Section 33(2)(b) preferred by the appellant but with liberty to the respondent to take recourse to appropriate remedy as may be available in law to question the said order of dismissal dated 13-10-2003.

18. Accordingly, we set aside the impugned decisions of the High Court as well as of the Joint Commissioner. The appeals are allowed in the above terms with no order as to costs.

3. The scope of interference with regard to the order of the authority / Labour Court under Section 33 (2) (b) is very limited and the authority ought not to have interfered with the order of punishment on the ground that the punishment imposed is harsh. The Apex Court in paragraph no.12 has categorically held that the remedy to interfere with punishment lies, if a dispute is raised and not otherwise. Hence the order of the authority is liable to be interfered with under Section 33 (2) (b).

4. The writ petition stands allowed with the above directions. No costs. Consequently connected miscellaneous petition is closed.

sk

Sd/-
Assistant Registrar(CJ Conf.)

//True Copy//

Sub Assistant Registrar

To
The Special Joint Commissioner of Labour,
DMS Compound, Chennai.

+1cc to Mr.S.Rajeni Ramadass, Advocate, SR.No.75164
+1cc to M/s.A.Jayanthi, Advocate, SR.No.74833

W.P.No.26279 of 2014

Kak(05/11/2019)