

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.29949 of 2014

The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Vellore Region,
Vellore.

... Petitioner

vs.

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

2. J.Ravi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records of the order passed by the 1st Respondent in Approval Petition in A.P.No.228 of 2012, dated 05.12.2013 and to quash the same as illegal.

For Petitioner : Ms.Rajeni Ramadoss

For R1 : Court

For 2nd Respondent : No appearance

O R D E R

Challenging the order dated 05.12.2013 passed by the 1st Respondent in Approval Petition No.228 of 2012, the Transport Corporation has come up with the present Writ Petition.

2. According to the Petitioner/Transport Corporation, the 2nd Respondent was appointed as a Driver on 12.07.2000 in their Corporation. For appointment as a Driver, the candidate should have passed 8th Standard. At the time of appointment, the 2nd Respondent produced a Record Sheet issued by Thippasamudaram Panchayat School. However, on enquiry with the District Elementary Educational Officer on 22.09.2004, it was confirmed that the Record Sheet produced by the 2nd Respondent was a bogus one. Hence, the Petitioner/Transport Corporation issued a

Charge Memo dated 08.12.2004 for the said misconduct committed by the 2nd Respondent. As the reply sent by the 2nd Respondent was not satisfactory, the Petitioner/Transport Corporation appointed an Enquiry Officer to enquire into the charges. The Enquiry Officer concluded the enquiry, holding that the charges against the 2nd Respondent were proved.

3. On receipt of the Enquiry Report, the Petitioner issued a second Show Cause Notice dated 06.10.2006 to the 2nd Respondent with a proposal to dismiss him. As the explanation offered by the 2nd Respondent was not satisfactory, the Petitioner/Transport Corporation dismissed him from service on 24.08.2012.

4. Since an Industrial Dispute was pending before the Joint Commissioner of Labour, Conciliation, the Petitioner/Transport Corporation filed an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 in A.P.No.228 of 2012. In compliance of the procedures contemplated under Section 33(2)(b) of the Act, the Petitioner/Transport Corporation sent one month's salary as well as Form 'T' to the 2nd Respondent. The said Approval Petition was rejected by an order dated 05.12.2013, on the ground that prima facie case has not been made out, as the concerned District Elementary Educational Officer or School Head Master has not been examined as a witness.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. The issue for consideration in the case on hand is whether the 1st Respondent is right in rejecting the Approval Petition on the ground that the District Elementary Educational Officer has not been examined as a witness.

7. In this regard, it is worth referring to the judgment of the Apex Court in the case of J.D.Jain vs. The Management of State Bank of India reported in AIR 1982 SC 673, wherein, the admissibility of hearsay evidence in domestic enquiry was discussed at length. Relevant portion of the said judgment reads thus:

"9.

The learned Tribunal has committed another error in holding that the finding of the domestic enquiry was based on "hearsay" evidence. The law is well-settled that the strict rules of evidence are not applicable in a domestic enquiry.

This Court in the case of State of Haryana & Anr. v. Rattan Singh held:

"It is well-settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility."

10. The next question is, is the evidence in the domestic enquiry really hearsay, as held by the Tribunal ?

The word 'hearsay' is used in various senses. Some times it means whatever a person is heard to say; some times it means whatever a person declares on information given by someone else. (See Stephen on Law of Evidence).

The Privy Council in the case of Subramaniam v/s. Public Prosecutor, observed: "Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of that is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or some other persons in whose presence these statements are made."

8. In the case on hand, the Enquiry Officer has come to the conclusion that the Certificate produced by the 2nd Respondent/workman is a fabricated one and not genuine. On technical grounds, when the District Elementary Educational Officer or the School Head Master have not been examined, it cannot be stated that charges against the 2nd Respondent have not been proved, more particularly, when ample opportunity has been given to the 2nd Respondent/workman in the domestic enquiry.

9. In view of the Apex Court decision rendered in J.D.Jain's case (cited supra), when 'hearsay' evidence is admissible in domestic enquiry, the finding of the 1st Respondent that the Petitioner/Transport Corporation has not established a prima facie case against the 2nd Respondent/workman, cannot be accepted, when the fact remains that the 2nd Respondent has produced a bogus Certificate to gain employment in the Petitioner/Transport Corporation. Hence, the order dated 05.12.2013 passed by the 1st Respondent in A.P.No.228 of 2012 requires interference and it is accordingly set aside.

This Writ Petition is allowed with the above direction and observation. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Special Deputy Commissioner of Labour,
Teynampet, Chennai 600 006.

+lcc to Ms.S.Rajeni Ramadass, Advocate Sr.69682

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