

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM  
and  
THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.A.No. 2754 of 2018

The General Manager,  
State Express Transport Corporation  
(Tamil Nadu) Ltd.,  
Pallavan Salai, Chennai - 02.

...Appellant

Vs.

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

2. S.Sivaperumal

...Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent,  
against the Order dated 25.09.2018 in W.P.No.26411 of 2014.

Writ Petition filed under article 226 of the Constitution of  
India, praying for the issuance of a Writ of certiorarified  
Mandamus to call for the records in order dated 18.04.2013 in  
Approval Petition No.137/2010 on the file the Special Deputy  
Commissioner of Labour Teynampet Chennai and to quash the same  
and consequently allow the approval petition.

For Appellant : Mr.S.R.Rajagopal  
Additional Advocate General for  
Mr.R.P.Prathap Singh  
Government Advocate

For Respondents : Mr.Udhaya kumar  
Additional Government Pleader  
(for R.1)  
Mr.M.Gnanasekar (for R.2)

## JUDGMENT

Judgment of the Court was delivered by T.S.SIVAGNANAM, J.

This Writ Appeal is directed against the order in the Writ Petition No.26411 of 2014 dated 25.09.2018 filed by the appellant praying to set aside the above order.

2. Heard Mr.S.R.Rajagopal, learned Additional Advocate General for Mr.R.P.Prathap Singh, learned Government Advocate for the appellant and Mr.R.Udhaya Kumar, learned Additional Government Pleader for R.1 and Mr.M.Gnanasekar for R.2.

3. This appeal by the General Manager of the State Express Transport Corporation is directed against the order passed in W.P.No.26411 of 2014 dated 25.09.2018. The appellant/Transport Corporation filed the said writ petition challenging the order passed by the first respondent rejecting the approval petition filed by the appellant/management under Section 33(2)(b) of the Industrial Disputes Act, 1947 (Central Act XIV 47). The second respondent was working as a driver in the appellant corporation and he had taken the bus owned by the appellant corporation from Myladudurai and the bus was proceeding towards Chennai. Near Koovathur New Colony on east coast road, it appears that a villager was driving two buffaloes and holding the rope which was tied to the buffaloes.

4. The case of the second respondent/workman is that suddenly the bus ran amok thereby dragging the villager and the buffaloes had hit against the bus and the villager was dragged and knocked away by the bus. This resulted in the death of the said villager. A charge memo was issued to the second respondent dated 19.04.2007. On a reading of the charge memo, it is seen that the allegation is something different from what was reported by appellant/management before the first respondent in the approval petition. The allegation was that the second respondent/workman dashed the Government bus against an ongoing vehicle, thereby causing damage to the vehicle and causing a loss to an extent of Rs.5,000/- to the appellant/management on account of the damage caused to the ongoing vehicle.

5. However, this appears to be totally a wrong allegation and this fact has been virtually admitted by the appellant corporation because in the approval petition, the allegation was that the second respondent/workman caused the accident resulting in the death of the villager. The second respondent submitted his explanation dated 01.06.2007 stating that the villager was dragged by the buffaloes and if he left the rope which he was holding, the accident could have been averted. However, the management did not accept the explanation and ordered for conduct of domestic enquiry. In the domestic enquiry, the

charges were held to be proved by the Enquiry Officer, ultimately resulting in order of dismissal dated 10.08.2010. The management filed application under Section 33(2)(b) of the Act seeking approval of the order of dismissal. Before the first respondent, both parties have filed documentary evidence. The appellants marked three documents namely Ex.A.1, Basic Report, Ex.A.2, Charge Memo, Ex.A.3, Enquiry findings and acknowledgment, Ex.A.4, Second show cause notice and explanation, Ex.A.5, Final Order. The second respondent/workman marked 10 documents as Exs.R.1 to R.10.

6. The first respondent after considering the documentary evidence placed before it and the findings recorded by the Enquiry Officer found that the management has not been able to establish by independent evidence that the accident was caused on account of rash and negligent driving of the second respondent/workman.

7. Furthermore, no person who was a witness to the accident was examined in the domestic enquiry. Accordingly, held that the charge against the second respondent/workman has not been established and proved by the appellant/management. There were four other issues which were framed for consideration by the first respondent which were held in favour of the appellant/management. Since, the first respondent held that the appellant/management has not proved the charge against the second respondent/workman with adequate evidence, by order dated 18.04.2013 refused the approval of the order of dismissal. This order was put to challenge by the appellant in the writ petition.

8. The writ Court considered entire factual matrix and found that there was no evidence to establish the charge against the second respondent, but also held that the second respondent has entered in the log book about defective brake in the bus and the defect was not rectified.

9. The learned Additional Advocate General would submit that such a plea was never raised by the second respondent/workman while submitting his explanation dated 01.06.2007 to the charge memo. However, it is seen that in the counter affidavit filed to the approval petition the second respondent/workman has specifically stated the same. Even much earlier during the course of cross examination, in the domestic enquiry, the second respondent/workman has specifically stated about the same and the Enquiry Officer has recorded the same. The Management was unable to disprove the said statement made by the second respondent/workman.

10. Thus, considering totality of the circumstances, the

Writ Court held that there is no ground made out by the appellant to interfere with the order passed by the first respondent. Even before us, the same ground which was raised before the writ Court were almost canvassed. To be noted in exercise of jurisdiction under Article 226 of the Constitution of India and examining correctness of the order passed by the Labour Authorities or Labour Court, the writ Court would be entitled to examine as to whether there was any perversity on the part of the authority or Tribunal or whether there was any serious error in the decision making process. The writ Court will not be entitled to substitute its opinion to that of actual finding recorded by the Authority/Tribunal unless such finding is wholly based upon no evidence.

11. In the instant case, none of such grounds have been made out by the appellant/corporation and therefore, we held that the writ Court was right in dismissing the writ petition filed by the appellant/management.

12. For the above reasons, the writ appeal is devoid of merits and accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mrm/ssb

To

The Special Deputy Commissioner of Labour,  
Teynampet, Chennai.

+1cc to Mr.M.Gnanasekar, Advocate, S.R.No. 13549

W.A.No. 2754 of 2018

CP(CO)  
GN(23/03/2019)