

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 5902 of 2019
and
W.M.P. No. 6742 of 2019

The Management
Tamil Nadu State Transport Corporation (Coimbatore) Limited,
Erode-1. ...Petitioner

-vs-

R.Madhan ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the Order dated 27.07.2018 passed by the Special Joint Commissioner of Labour, Chennai in A.P. No. 122 of 2014 and to quash the same.

For Petitioner : Mr. A.Sundaravadhanam, Standing Counsel
For Respondent : Mr. Sivakumar

ORDER
(through video conference)

Heard Mr. A.Sundaravadhanam, Learned Standing Counsel appearing for the Petitioner and Mr. Sivakumar, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent, who was employed as driver, had been terminated from service by the Petitioner by Order in Pa. No. 2620/G5/168/Sattam/Tha A Poka/EeMa/2009 dated 30.05.2014 on the charge of negligent driving. Since conciliation proceedings relating to an industrial dispute between the Petitioner and the Trade Union in which the Respondent was a member was then pending before the Special Deputy Commissioner of Labour, Chennai (hereinafter referred to as the 'Conciliation Officer' for clarity and convenience), the Petitioner had made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short) for approval of termination, but it was rejected by order dated

27.07.2018 in A.P. No. 122 of 2014 passed by the Conciliation Officer. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. It is evident from the impugned order that the Conciliation Officer has examined the application for approval made by the Petitioner with reference to the relevant aspects stipulated in the decision of the Hon'ble Supreme Court of India in *Lalla Ram -vs- D.C.M. Chemical Works Ltd.* [(1978) 3 SCC 1], which are as follows:-

- (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;
- (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;
- (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;
- (iv) whether the employer has paid or offered to pay wages for one month to the employee; and
- (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

4. The Conciliation Officer came to the conclusion that the requirement in item (v) alone had been satisfied and in respect of the aspects in items (i) and (ii), it was held that since the eye-witnesses of the accident were not examined in the domestic enquiry and the Respondent has been subsequently acquitted by the Judicial Magistrate from the charge of negligent driving and against which no appeal has been preferred, the domestic enquiry has not been conducted following the Rules, Standing Orders and the principles of natural justice and that prima facie case has not been made out. It was opined that since the aspects in items (i) and (ii) have not been satisfied, it would follow for item (iii) that the dismissal of the Respondent is an act of victimization. It was held that the requirement in item (iv) had not been fulfilled inasmuch as the Petitioner has paid only part of the one month wages to the Respondent at the time of dismissal and the balance has been paid at a later stage.

5. Insofar as the question relating to validity of the domestic enquiry is concerned, the reason assigned by the Conciliation Officer is that it is vitiated because the eye-witnesses of the accident has not been examined as witness in the domestic enquiry to prove the charge. It would suffice here to refer to the decision of the Hon'ble Supreme Court of India in *Management*

of Tamil Nadu State Transport Corporation (Coimbatore) Limited -vs- M.Chandrasekaran [(2016) 16 SCC 16], where it has been held that it would not be necessary to examine the eye-witnesses to an accident for which an employee is charged for misconduct of negligent driving as the doctrine of res ipsa loquitur would come into play and the burden would shift on the employee who was in control of the bus to establish that the accident did not happen on account of the negligence on his part. It would also be necessary to focus here that the Hon'ble Supreme Court of India in the decision in John D'Souza -vs- Karnataka State Transport Corporation (Order dated 16.10.2019 in Civil Appeal No. 8042 of 2019) has explained the law relating to the procedure to be adopted in a proceeding for approval under Section 33(2)(b) of the Act with reference to the earlier rulings, as follows:-

"31. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified....

34. It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the Management on the scale that the standard of proof required therein can be 'preponderance of probability' and not a 'proof beyond all reasonable doubts' suffers from inherent defects or is violative

of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part of the enquiry to be held under Section 33(2) (b) of the Act."

Viewed from this perspective, if the Conciliation Officer had been of the opinion that the domestic enquiry suffered from any infirmity, the same ought to have been disclosed to the parties and thereafter they ought to have been called upon to adduce their evidence in support of their respective contentions and then finally decided the validity of the domestic enquiry.

6. At this juncture, it must be recapitulated here that the Constitution Bench of the Hon'ble Supreme Court of India in Karnataka State Road Transport Corporation -vs- Lakshmiddevamma [(2001) 5 SCC 433] has held that in order to avoid unnecessary delay and multiplicity of proceedings, when an employer seeks approval under Section 33(2)(b) of the Act, leave to lead additional evidence to support the action in the alternative and without prejudice to his rights and contentions has to be made in application itself. In this case, it is seen from para 8 of Form-T that the Petitioner has sought for such leave.

7. It has been held by this Court in Management of Metropolitan Transport Corporation (Chennai) Ltd. -vs- A.Ramesh Babu (Order dated 03.02.2016 in W.P. Nos. 33497 to 33505 of 2015) that if the employer has undertaken to pay the difference in one month wages that may arise in the Approval Petition under Section 33 (2) (b) of the Industrial Disputes Act, 1947, and if there is any calculation mistake or any other error, it would not vitiate the termination when the employer makes good the deficit payable. It would follow as a corollary that if there is any difference in wages remaining to be paid, it is incumbent upon the Conciliation Officer to call upon the Petitioner to pay the same to the Respondent under written acknowledgment before refusing approval for that reason.

8. As it is apparent that the exercise in accordance with the procedure required to be followed in the aforesaid binding decisions of the Hon'ble Supreme Court of India and this Court had not been undertaken by the Conciliation Officer in this case, it would not be possible to uphold the impugned order refusing approval for termination of the Respondent.

9. The result of the foregoing discussion is that the impugned order dated 27.07.2018 in A.P. No. 122 of 2014 passed by the Conciliation Officer, which cannot be sustained, is set aside and the matter is remitted back to the Conciliation Officer for

deciding the matter afresh in the required manner. In order to expedite disposal, the matter shall be listed for hearing before the Conciliation Officer at 11.00 a.m. on 03.12.2020 when the Petitioner and the Respondent shall appear in person or through their authorized representative as well as on the subsequent dates to which it is adjourned. If the Conciliation Officer is not in a position to take up the matter for hearing on that date, he shall inform all parties concerned of the date of hearing to which it is adjourned in the prescribed manner. It shall be ensured by the Conciliation Officer that there is atleast one effective hearing every week showing progress of the case, that full opportunity of hearing is afforded to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised by them on merits and in accordance with law, that the decision taken is communicated to the concerned parties under written acknowledgment and that proof of such compliance is filed by 31.03.2021 before the Registrar (Judicial) of this Court. Though obvious, it is needless to add here that while deciding the matter, the Conciliation Officer shall not be inhibited or influenced by the impugned order, which has been set aside.

10. Learned Counsel for the Respondent submits that the Respondent is entitled to the benefit of reinstatement in service in terms of clause (23) of the Settlement dated 28.09.1995 under Section 12(3) of the Act entered between the Petitioner and the Trade Union in which the Respondent was a member. It is made clear that the Respondent is not precluded from working out his remedies for such relief, if he is eligible for the same, in the manner recognized by law and that no view has been expressed by this Court on the correctness or otherwise on the entitlement of the claim made in that regard.

11. The Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vjt

To

1. The General Manager,
Tamil Nadu State Transport Corporation (Coimbatore) Limited,
Erode-1.

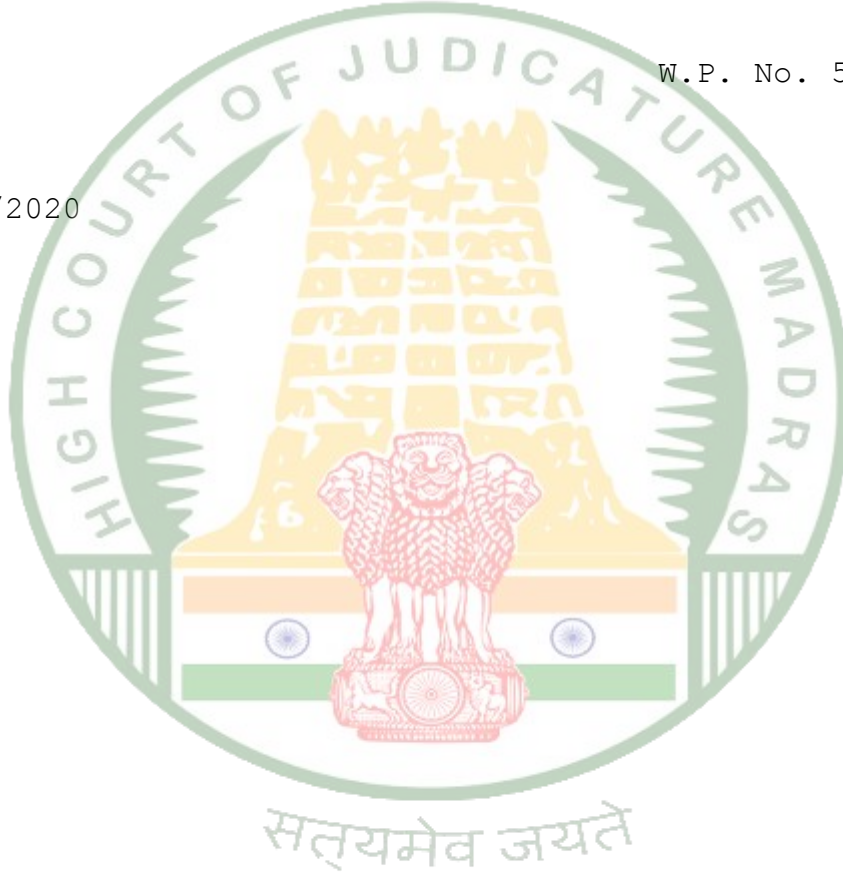
Copy to

1. The Special Deputy Commissioner of Labour,
D.M.S. Compound, Teynampet,
Chennai.
2. The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to M/s.A.Sundaravadhanan, Advocate, S.R.No.32331
+1cc to M/s.V.Sivakumar, Advocate, S.R.No.32386

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BP(CO)
KKV/04/11/2020



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