

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.13402 of 2018
and
W.P.No.16901 of 2018

W.P.No.13402 of 2018

R.Selvaraj ... Petitioner
vs

1. The General Manager,
Tamil Nadu State Transport
Corporation (Kovai) Ltd.,
Erode Region,
Erode.
2. Special Deputy Commissioner of Labour,
DMS Complex,
Anna Salai,
Chennai - 600 001. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus to direct the 1st respondent to implement the impugned refusal order dated 09.01.2018 passed in A.P.320/14 under the provision of 33(2) (b) of the Industrial Disputes Act, 1947 by the 2nd respondent relating to the dismissal order passed on him vide ref.6287/D1/46/Legal/TNTC/ER/2011 dated 22.12.2014.

For Petitioner : Mr.A.Rajendiran

For Respondents: Mr.J.Lokesh

for Mr.K.J.Sivakumar for R1

Mr.D.Suriyanarayanan,

Additional Government Pleader for R2

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W.P.No.16901 of 2018

The Management,
Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
Erode Division,
Erode.

... Petitioner

vs

1. R.Selvaraj

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Special Deputy Commissioner of Labour,
Chennai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records relating to the order dated 09.01.2018 passed in A.P.No.320 of 2014 on the file of the 2nd respondent and quash the same as being illegal arbitrary and unconstitutional.

For Petitioner : Mr.J.Lokesh
for Mr.K.J.Sivakumar.

For Respondents: Mr.A.Rajendiran for R1
Mr.D.Suriyanarayanan,
Additional Government Pleader for R2

C O M M O N O R D E R

W.P.No.13402/2018 is filed by the workman seeking for Mandamus directing the 1st respondent to implement the refusal order dated 09.01.2018 passed in A.P.No.320/2014 under the Provisions of Section 33(2)(b) of the Industrial Disputes Act 1947. W.P.No.16901/2018 is filed by the Management challenging the said order made in A.P.No.320/2014 dated 09.01.2018.

2. Since both the writ petitions are taken up for hearing together, I call the parties on both the writ petitions based on their status.

3. The workman was working as driver in the Management, which is the Tamil Nadu State Transport Corporation. In pursuant to an accident that had taken place on 27.08.2011, the Management initiated disciplinary action against the workman by issuing a charge memo. After conducting enquiry, the Management passed an order of dismissal against the workman. Consequently, the Management filed an application under Section 33(2)(b) of the Industrial Disputes Act before the competent authority for approval of the said dismissal order. The competent authority viz., Special Deputy Commissioner for Labour, Chennai, refused to grant approval by passing the order in A.P.No.320/2014 dated 09.01.2018. It is seen that the said authority, while deciding the application filed under section 33(2)(b), found that the Management has not made out a prima facie case and that domestic enquiry was not conducted by examining the eye witnesses. He also found that the order of dismissal was passed as a vindictive measure. The learned counsel for the Management Corporation contended that while considering the application under section 33(2)(b), the authority has to only see whether any prima facie case is made out by the Management and that the enquiry

was conducted by following due process of law and giving sufficient opportunity to the delinquent. After saying so, the learned counsel submitted that in this case, the concerned authority has gone beyond such scope and rejected the application on the reason that the Management has not examined the eye-witnesses and also by observing that the punishment is vindictive in nature.

4. On the other hand, the learned counsel appearing for the workman submitted that apart from the fact that the Management has not examined the eye witnesses, further fact remains that the Management has taken two different stand contrary to each other, one before the Tribunal which heard and decided the M.C.O.P. case filed by the victim and another before the domestic enquiry. It is stated by him that before the Motor Accident Claims Tribunal, the Management has clearly stated in their counter affidavit that the workman herein was driving the vehicle in normal speed and in diligent manner fully observing the traffic rules and regulations and that the pedestrian who suddenly crossed the road from right side to left side without following the traffic rules, was the reason for the accident. Therefore, he submitted that the Management is not justified in taking a different stand in the domestic enquiry and dismiss the petitioner thereafter, as if the charges are proved against the petitioner. In support of his contention, the learned counsel relied on the Division Bench decision of this Court made in 2008(1) MLJ 694 (Tamil Nadu State Transport Corporation (Kumbakonam Dn.II) Ltd. vs. P.Karuppusamy).

5. Heard both sides. Perused the materials placed before this Court.

6. The Approval Petition filed under section 33(2) (b) was rejected by the competent authority on the reason that eye witnesses were not examined by the Management and that the enquiry conducted was not fair and proper enquiry. Though the said authority has also given a finding as if the punishment given was as a measure of vindictiveness, this Court is not inclined to go into such issue as it is fully convinced that the Management has not made out a case before this Court to interfere with the order of the said authority in rejecting the approval petition for the following reasons.

7. It is seen that the Management has admittedly not examined the eye witnesses. Even otherwise, as rightly pointed out by the learned counsel for the petitioner/workman, the stand of the Management before the Motor Accident Claims Tribunal, which is evident from the counter affidavit filed therein, would clearly show that the workman herein was not responsible for the accident and therefore, the charge levelled against him was not supported by their own pleadings before the Motor Accident Claims Tribunal in M.C.O.P.No.1087/2011. For better understanding paragraph No.3

of the counter statement filed by the Management in M.C.O.P.No.1087/2011 is extracted hereunder.

"3. This respondent denies the narration of accident in the petition. The actual facts of the accident are furnished below.

On 27.08.2011 the driver of the respondent drove the bus bearing Regn.No.TN 33 N 2491 from Tiruppur to Erode in a normal speed and diligent manner fully observing the traffic rules and regulations. At about 8.20 PM this respondent driver slowed down the bus on seeing the pedestrian who suddenly crossed the road from right side to left side and without following the traffic rules and stopped the bus. Even then the pedestrian lost his control and dashed with the front side of the respondent bus. The pedestrian voluntarily invited the accident and contributed his negligence. Therefore there is no negligence or carelessness on the part of this respondent driver and as such no liability could be fastened upon the respondent. When the deceased pedestrian himself was at fault the petitioners are not entitled to get any compensation from this respondent. The driver of the bus had taken all steps to avoid the accident."

8. Perusal of the above said stand taken by the Management before the Motor Accident Claims Tribunal, thus, would undoubtedly indicate that the workman has driven the vehicle in a normal speed and diligent manner by fully observing the traffic rules and regulations. The question as to whether the Management can take a different stand in the domestic enquiry, has already been considered and answered by Division Bench of this Court in a decision reported in 2008(1) MLJ 694 (Tamil Nadu State Transport Corporation (Kumbakonam Dn.II) Ltd. vs. P.Karuppusamy), wherein it is held at paragraph No.24 as follows:

"24. The principles laid down in the aforesaid rules are squarely applicable to the facts of the present case. The appellant Corporation, having taken a plea that the driver of the bus was not responsible for the accident, could not turn around to say that he was responsible for the accident. As such, it is very much bound by the pleadings raised by it before the Tribunals and this Court. The law is well settled as to the aspect that the standard of proof in both the proceedings before the criminal Court and the domestic enquiry officer are entirely different. however, since the Corporation has consciously raised the contention in favour of the bus driver before the judicial fora, it is precluded from proceeding against him in departmental proceedings. Though

the extent of proof is sufficient to the commission of delinquency in the matter of departmental proceedings, the management could not lay its hands on the workman, detrimental to his interest, after defending him before various judicial fora and accepting the findings of the Motor Accident Claims Tribunal, Karur. Further, in the dismissal order, dated 9.12.1998, it is mentioned that even though a scrutiny of the service records would show that the respondent was not at all penalised at any point of time, since he caused a fatal accident, it was proposed to dismiss him from service, which shows that the past records of the respondent were also clean."

9. In view of the findings and observations rendered by the Division Bench of this Court as referred to supra, holding that the management cannot lay its hands on the workman, detrimental to his interest, after defending him before Motor Accident Claims Tribunal, I find that the said decision is squarely applicable to the present case. Consequently, the Management is not justified in challenging the order in refusing to grant approval.

10. Accordingly, the Writ Petition filed by the Management in W.P.No.16901/2018 is dismissed and W.P.No.13402/2018 filed by the workman is allowed. In view of the order passed in these Writ Petitions confirming the order made in the application filed under Section 33(2)(b), the Management shall give effect to the said order within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

vsi

To

The Special Deputy Commissioner of Labour,
DMS Complex,
Anna Salai, Chennai - 600 001.

Copy to :

The General Manager,
Tamil Nadu State Transport
Corporation (Kovai) Ltd.,
Erode Region, Erode.

+1cc to Mr.Rajendiran , Advocate SR.No. 12326

+1 cc to Government Pleader Sr.No. 13593,13594

W.P.Nos.13402 of 2018
and W.P.No.16901 of 2018