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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.11613 of 2015

and

M.P.No.1 of 2015

The Management  
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,  
Periyamilaguparai  
Trichirappalli 620 001.  
Rep.by its General Manager.

... Petitioner

-vs-

1. S.Anbalagan
2. The Joint Commissioner of Labour (Conciliation)  
DMS Compound  
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari to call for the records passed by the 2<sup>nd</sup> respondent in A.P.No.186 of 2003 dated 31.05.2013 and to quash the same.

For Petitioner : Mr.D.Venkatachalam

For R1 : No Appearance

O R D E R

This Writ Petition has been filed, challenging the order of the 2<sup>nd</sup> Respondent dated 31.05.2013 passed in A.P.No.186 of 2003, by which, approval was not accorded for dismissal of the Employee / 1<sup>st</sup> Respondent herein.

2. It is the case of the Petitioner / Management that the Employee was employed as Driver in the Management and he was dismissed from service for the accident caused by him, based on the report of the Enquiry Officer. When a Petition was filed for approval of the action of the Management, the same was rejected



by the Authority on erroneous grounds. Aggrieved by the same, the Management is before this Court.

3. Heard the learned counsel for the Management. There is no representation on behalf of the Employee.

4. The order of the Authority has been challenged on two grounds, namely, the Authority has erroneously held that a) hearsay evidence cannot be accepted and there are no eye witnesses to the occurrence and b) the stand taken by the Management before two different Forum, is contradictory and therefore, it has got to be construed that there is no legal evidence.

5. In the considered opinion of this Court, the finding of the Authority to the extent that eye witness is mandatory, is bad in the eye of law, as the Apex Court in the case of J.D.Jain vs. The Management of State Bank of India, reported in 1982 AIR 673, categorically held that hearsay evidence is an admissible evidence in the departmental enquiry being conducted against an employee. For better appreciation, the decision of the Hon'ble Supreme Court in the said case (supra) is extracted hereunder:

"In the instant case, the Tribunal after having made a detailed reference to the evidence of the witnesses found that a complaint was made by Kansal and that the appellant confessed that he had altered the debit authority, but held That as Kansal was not examined, this was not direct evidence but was of the nature of 'hearsay' evidence, with regard to the fact whether the appellant manipulated the documents, withdrew the excess amount and misappropriated it, there is no direct evidence of any of the witnesses except the appellant's confession. The evidence on which reliance has been taken by the respondent is the confession and circumstantial evidence. The evidence of Kansal would have been primary and material. if the fact in issue were whether Kansal authorised the appellant to make the alterations in the authority letter. But Kansal's complaint was to the contrary. No rule of law enjoins that a complaint has to be in writing as insisted by the Tribunal. For the purpose of a departmental enquiry, complaint substantiated by circumstantial evidence is enough. What the respondent sought to establish in the domestic enquiry was that Kansal had made a verbal complaint with regard to the withdrawal of excess money by the appellant. On the factum of complaint of Kansal the evidence of these four witnesses is direct as the complaint is



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said to have been made by Kansal in their presence and hearing. It is not therefore 'hearsay'. The respondent has succeeded in proving that a complaint was made by Kansal on the evidence of these four witnesses."

6. However, insofar the other ground, viz, different stands have been taken by the Management (one in the Motor Accident Claims Tribunal and the other in the Departmental Proceedings), is concerned, the Authority was right in rejecting the approval petition, by observing as follows:-

"The opposite party in his written arguments stated that the applicant side witness has stated in the domestic enquiry that the cause of the accident is fully attributable to the opposite party. But, the applicant has taken a diametrically opposite stand and deposed before the Principal District Judge, Karur in the motor accident claim by the legal heir of the deceased TVS-50 driver that the driver of the corporation, i.e., the respondent herein, was not at all responsible for the accident and the deceased TVS-50 driver was only at fault. The applicant took two different stand at two different forum in respect of the same incident i.e, the accident involving the TVS-50 and the Corporation bus, which is totally contradictory to one another, which ultimately doubts the credibility of the applicant and it is apparent on the face of it that the applicant bent upon dismissing the opposite party from the services of the Corporation, which is nothing but a clear case of victimisation and unfair labour practice."

7. In view of what is stated above, I find that since the Management had taken two different & contradictory pleas, the order of the authority is perfectly justified, warranting no interference by this Court. Accordingly, this Writ Petition is dismissed. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dpq



To:

The Joint Commissioner of Labour (Conciliation)  
DMS Compound  
Chennai.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.37114

W.P.No.11613 of 2015  
and  
M.P.No.1 of 2015

GPL (CO)  
SU (30/11/2021)