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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.37957 of 2004

V. Guhanathan

...Petitioner

..Vs..

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. The Management of
Tamil Nadu State Transport
Corporation (Coimbatore Division) Ltd.,
Coimbatore.

...Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the records relating to the order dated 28.07.2004 in I.A.No.542/2004 in I.D.No.372/1998 passed by the first respondent, quash the same and consequently direct the 1st respondent to permit to adduce oral and documentary evidence under Section 11A of I.D.Act regarding malafide, victimisation and unfair labour practice including the marking of counter filed by the second respondent in M.C.O.P.No.297/97 as a document on petitioner's side, award costs and render justice.

For Petitioner : Mr. V.Ajay Khose

For R2 : Mr.A.Sundaravadanam

O R D E R

This writ petition has been filed, seeking to quash the order dated 28.07.2004 made in I.A.No.542 of 2004 in I.D.No.372 of 1998 by the 1st Respondent, by which, the request of the petitioner to adduce evidence under Section 11-A of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947) was declined. The petitioner also sought a direction to the 1st respondent to permit to adduce oral and documentary evidence, including marking of the counter filed by the second respondent in M.C.O.P.No.297 of 1997 as a document on petitioner's side.



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

3. The case of the petitioner / employee is that he wanted to mark the counter filed by the Management in MCOP.No.297 of 1997 on the reasoning that in the domestic enquiry, the Management had taken a stand that the employee is responsible for causing the accident and to the contrary, before the Motor Accident Claims Tribunal, it was stated that the driver was not responsible and the Claimant therein was responsible for the accident and injury suffered. When there is a contradictory stand taken by the Management, even assuming for the sake of argument that the domestic enquiry is fair and proper, in order to establish the contradictory stand, the employee must be allowed to let in additional evidence.

4. Learned counsel for the 2nd Respondent contended that the petitioner was punished for several times for his rash and negligent act and he also caused a fatal accident in February, 1995. Though he was cautioned to drive safely in the accident prone zones, he had not obeyed the instructions given by his Superior Officers and caused the death of a body in a crowded and congested area. Therefore, the order passed by the 1st respondent is perfectly valid and does not warrant any interference by this Court.

5. A reading of Section 11 & 11 (A) of the I.D.Act, 1947 makes it very clear that there is no bar in permitting the employee or the Management to let in additional evidence, irrespective of the fact that the domestic enquiry is fair and proper. Once the domestic enquiry is held to be fair and proper, other than on merits, the parties are entitled to lead evidence and to be more precise, a stand may be taken by the Management that the petitioner is not a Workman and the Management is not an Industry. Similarly, the Workman may also take a stand that there is victimization, unfair labour practice, discrimination and the like. For all these points, the parties are entitled to lead evidence, otherwise the provisions of the I.D.Act, 1947 itself will be defeated.

6. In this regard, this Court is supported by the Full Bench judgment of the Apex Court in the case of Indian Aluminium Co. Ltd. vs. Labour Court and Others, reported in 1991 (I) LLJ 328, wherein it has been held as follows:

"9 It was then contended on behalf of the appellant that respondent No. 2 having failed to adduce evidence as prayed for, when the question of validity of the domestic enquiry was being tried by the Labour Court as preliminary issue, could not now be allowed to adduce evidence in that behalf. Apart from the fact that this point was not urged by the



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appellant before the Labour Court or before the learned single Judge or in the memorandum of appeal before this court, because the only contention advanced on behalf of the appellant was that in view of the proviso to Section 11-A, no evidence whatsoever can be taken by the Tribunal, I do not find from the record of the Labour Court that any issue relating to bias or victimisation was framed by the Labour Court. The question of the validity of the domestic enquiry was tried as a preliminary issue in the context of the plea taken by respondent No. 2 that the enquiry was vitiated because the management was permitted in the domestic enquiry to adduce evidence after it had closed its case and after the evidence of respondent No. 2 was recorded. Though the plea was upheld by the Labour Court and domestic enquiry was found to be farcical, the order of the Labour Court was set aside by a learned single Judge of this Court. I refrain from expressing any opinion about the merits of that order because that order is not the subject matter of appeal before this Court. There is no material on record to hold that in the instant case the Labour Court had applied its mind to the question as to whether the action taken by the management was vitiated because of bias of the enquiry officer or for want of good faith or on account of victimisation. Respondent No. 2 has raised these pleas in his written Statement and it is but proper that he should be allowed opportunity to adduce evidence to substantiate these pleas. It was contended that the question of victimisation would not be relevant if misconduct was proved. What would be the effect of bias or victimisation on the action taken by the management are matters for the consideration of the Labour Court and I refrain from expressing any opinion in that behalf. But at this stage respondent No. 2 cannot be debarred from adducing evidence in that behalf. This is not a case where an issue was framed by a Labour Court embracing all the pleas taken by a workman assailing the action of the management and the workman had failed to adduce evidence in that behalf when the said issue was being tried. In the circumstances of the case, therefore, the learned single Judge was, in my opinion, right in holding that there was no error apparent on the face of record for quashing the impugned order passed by the Labour Court. I see no cogent reason to take, a view different from that taken in the decision in C.W.J.C.No. 58 of 1982(R) on which reliance was placed by the learned single Judge. No case is, therefore, made out for interference with the order passed by the learned single judge.



10. The appeal fails and is, accordingly, dismissed. In the circumstances of the case, parties shall bear their own costs of this appeal."

I find much force in the submission raised on the side of the petitioner and in my view, the order passed by the Labour Court dated 28.07.2004 in I.A.No.542 of 2004 I.D.372 of 98 is not valid in the eye of law and does warrant interference by this Court.

7. Accordingly, the Writ Petition is allowed and the impugned order is set aside. The matter is remanded back to the Labour Court, with a direction to permit the petitioner to adduce additional document, namely, the counter statement filed by the Management before the MACT and decide the issue, on the basis of the observation made supra. The decision shall be taken by the Labour Court within a period of three months from the date of receipt of a copy of this order, without adjourning the matter beyond three working days at any point of time. Invariably, the Driver would have caused the accident and in order to avoid compensation, the Management used to take a plea that the Driver was not at fault, that makes fatal to the Management, when they take a plea, contrary to the one taken before the Motor Accident Claims Tribunal. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. The Management of Tamilnadu State
Transport Corporation (Coimbatore Division) Ltd.,
Coimbatore.

+1cc to M/s.V.Ajay Khose, Advocate, S.R.No.23491

W.P.No.37957 of 2004

SSN(CO)
RGA(09/08/2021)