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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2021

CORAM

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

W.P. No. 31419 of 2018
and
W.M.P. No.36616 of 2018

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
No.27, Railway Station New Road,
Kumbakonam – 612 001. ... Petitioner

-vs-

1. R.Pappaiyan (deceased)

2. The Special Deputy Commissioner of Labour,
Chennai – 6.

3. Anbarasi

4. Ramsundar

5. Devadharshini ... Respondents

(R3 to R5 substituted as LRs of deceased R1 vide order of this Court dated 08.07.2021 made in W.M.P. No. 22965 of 2020 in W.P. No. 31419 of 2018)

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 14.09.2017 passed by the second respondent in Approval Petition No. 299 of 2011 and quash the same, consequently direct the second respondent to approve the order of the petitioner dated 19.08.2011 dismissing the first respondent from service.

For Petitioner : Mr.D.Venkatachalam
For Respondents: R1 died
Mr.L.S.M.Hasan Fizal
Government Advocate for R2
Mr.T.Ananthasekar for R3 to R5

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O R D E R

Petitioner / Transport Corporation has come up with this Writ Petition challenging the order dated 14.09.2017 passed by the second respondent / Authority in Approval Petition No. 299 of 2011.

2. It is represented by the learned counsel for the petitioner / Transport Corporation that, the deceased employee joined the services of the petitioner / Transport Corporation as a Driver. While the deceased employee was on duty on 07.01.2010, he was responsible for a fatal accident and after conducting due enquiry, he was dismissed from service on 19.08.2011.

3. It is seen that, the second respondent / Authority has rejected the Approval Petition filed by the Petitioner / Transport Corporation on the ground that, the domestic enquiry has not been fairly conducted and that, the punishment imposed on the employee is disproportionate to the charges framed against him.

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

5. When this Court posed a question to the learned counsel for the appellant as to what stand has been taken before the Motor Accident Claims Tribunal, he produced a copy of the counter filed in M.C.O.P. No. 166 of 2010 before the Tribunal, from which, it is seen that a different stand has been taken before the Tribunal to the extent that the Driver is not responsible for the accident. In view of the contradictory stand taken by the Management before the Tribunal and the departmental proceedings, in my view, the rejection order passed by the authority is perfectly valid and is in consonance with the proposition laid down by the Apex Court in Lalla Ram vs. Management of D.C.M. Chemical Works Ltd., and others reported in AIR 1978 SC 1004.

6. It is seen that the employee died in the interregnum period and the legal heirs were already brought on record. In normal circumstances, if the domestic enquiry is held to be improper, the matter would have been remanded back to the Authorities concerned to conduct an enquiry after affording an opportunity to the employer, as there is a plea made by the employer to let in evidence to prove the charges in the light of the Judgments rendered by the Hon'ble Apex Court in the case of John D' Souza v. Karnataka State Road Transport Corporation reported in (2019) 18 SCC 47 and in the case of Management, Tamil Nadu State Transport Corporation (Villupuram) Limited,

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Kancheepuram Region, Kancheepuram v. M.Chitti Babu (deceased) and others reported in 2021-I-LLJ-17 (Mad).

7. Though such a plea is present even at the initial stage, a fresh enquiry cannot be directed to be conducted on account of the fact that the employee is no more. Hence, the legal heirs are entitled to get the monitory benefits up to the date of the death of the employee.

8. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-CCC)

//True copy//

Sub Assistant Registrar

vji

To

The Special Deputy Commissioner of Labour,
Chennai - 6.

+1cc to Mr.T.Ananthasekar, Advocate SR.No.37323

+1cc to Mr.D.Venkatachalam, Advocate SR.No.37098

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and
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SV(CO)
GMY(22/10/2021)

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