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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2021

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.31857 OF 2018

AND

W.M.P.NO.37096 OF 2018

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

... Petitioner

-vs-

1. R.Sivamurugan
2. The Special Deputy Commissioner of Labour,
Chennai.

... Respondents

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 11.07.2018 passed by the second respondent in Approval Petition No.60 of 2013 and quash the same, consequently direct the second respondent to approve the order of the petitioner dated 01.03.2013 dismissing the first respondent from service.

For Petitioner :	Mr.D.Venkatachalam
For Respondents:	No appearance for R1
	Mr.L.S.M.Hasan Fizal
	Government Advocate for R2

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 11.07.2018 passed by the second respondent in Approval Petition No. 60 of 2013.

2. 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.



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

4. 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. 29 of 2004 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.

5. Once the domestic enquiry is vitiated, 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, Kancheepuram Region, Kancheepuram v. M.Chitti Babu (deceased) and others reported in 2021-I-LLJ-17 (Mad) the matter will have to be remanded. Even if the matter is remanded and approval is granted by the Authority on remand, the employee is entitled to raise an Industrial Dispute and the Labour Court is empowered to take a different view in terms of Section 11(A) of the Industrial Disputes Act, 1947, taking into account the past record.

6. The charges in the enquiry were established and only for the purpose of cross examination, if the matter is going to be remanded and in case the Labour Court looks into the past records after the charges are established on enquiry, then the employee will have to face major punishment as the past records are also bad.

7. A reading of the enquiry proceedings makes it clear that, cross-examination was not permitted to be done in the enquiry. Hence, the Authority has come to the conclusion that, there is no legal evidence to establish the charges against the employee and that, there is victimization.

8. As regards the issue of victimization, it is worth referring to the decision rendered by the Apex Court in the case of Bharat Iron Works vs. Bhagubhai Balubhai Patel, reported in (1976) 1 SCC 518, relevant paragraph of which, reads thus:

"12. Again victimization must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the necessary proof of a valid charge against him. The question to be asked is: Is the reason for the punishment attributable to a gross misconduct about



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which there is no doubt or to his particular trade union activity which is frowned upon by the employer? To take an example, suppose there is a tense atmosphere prevailing in a Company because of a strike consequent upon raising of certain demands by the Union, each party calling the other highly unreasonable or even provocative, the Tribunal will not readily accept a plea of victimization as answer to a gross misconduct even when an employee, be he an active office-bearer of the Union, commits assault, let us say, upon the Manager, and there is reliable legal evidence to that effect. In such a case the employee, found guilty, cannot be equated with a victim or a scapegoat and the plea of victimization as a defence will fall flat. This is why once, in the opinion of the Tribunal a gross misconduct is established, as required, on legal evidence, either in a fairly conducted domestic enquiry or before the Tribunal on merits, the plea of victimization will not carry the case of the employee any further. A proved misconduct is antithesis of victimization as understood in industrial relations. This is not to say that, the Tribunal has no jurisdiction to interfere with an order of dismissal on proof of victimization."

9. In view of the contradictory stand and as the Transport Corporation is a 'State' within the meaning of Article 12 of the Constitution of India, in order to give a quietus to the issue and shorten the life of litigation, the petitioner / Transport Corporation is directed to reinstate the first respondent / employee in service as a fresh entrant and provide him employment to enable him to report for work from 01.10.2021.

10. In view of the above, the order dated 11.07.2018 passed by the second respondent / Authority in Approval Petition No. 60 of 2013 is confirmed and the Writ Petition stands disposed of with the above directions. No costs. Consequently, connected W.M.P. No. 37096 of 2018 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vji



To

The Special Deputy Commissioner of Labour,
D.M.S.Compound,
Chennai - 6.

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+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.37097

+1cc to the Government Pleader, S.R.No.40433

W.P.No.31857 of 2018

and

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RLD(CO)

CS/22/09/2021