



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.6680 of 2011

and

M.P (MD)No.1 of 2011

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The Management
Tamil Nadu State Transport Corporation
(Madurai) Limited
Represented by Managing Director
Dindigul Region,
Bye-Pass Road,
Collectorate P.O.,
Dindigul-624 004.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Thiruchirapally
(Dindigul Camp)

2.The General Secretary,
Tamil Nadu Arasu Pokkuvarathu
Tholilalar Sangam, (CITC)
V.P.Sinthan Memorial,
51, Kilaku Arockiamatha Theru,
Dindigul District.

... Respondents

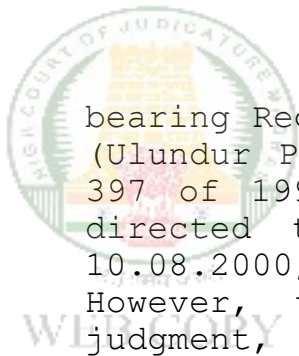
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the files of the 1st respondent pertaining to its proceedings in I.D.No.39 of 2009 dated 24.04.2010 and quash the same.

For Petitioner : Mr.S.C.Herold Singh
For R2 : Mr.S.Arunachalam
For R1 (Court)

ORDER

This writ petition is filed challenging the order of the first respondent, dated 24.04.2010 passed in I.D.No.39 of 2009.

2.The case of the petitioner/ Management is that the workman, viz., Thiru.Kulanthairaj was appointed as a Driver, on 06.12.1980 in the petitioner/Management. While the workman was discharging his duty as a Driver for the trip from Chennai to Dindigul, the bus



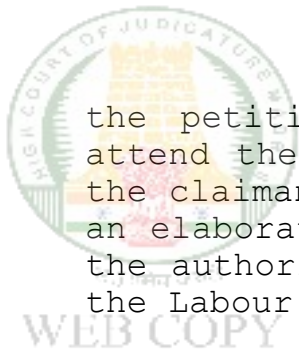
bearing Registration No.TN57-H-0245 met with an accident near Veppur (Ulundur Pet.). The injured passengers have filed MCOP Nos.396 and 397 of 1994. In order to substantiate the case, the workman was directed to attend the Court at Virudhachalam for enquiry on 10.08.2000, by granting duty permission and travelling allowance. However, the petitioner/Management, on a perusal of the said judgment, came to know that the workman had not attended the Court on 10.08.2000, which resulted in awarding of higher amount. The said act of the workman is against Sec.16(9), 16(13), 16(5), 16(40), 16(5), 16(20) and 16(13) of the Standing Orders of the Corporation. For the above said misconduct, on 06.02.2001, a charge memo was issued against the workman and he gave his explanation, on 19.03.2001. Since the said explanation was not satisfactory, in order to provide him an opportunity, a domestic enquiry was conducted, on 07.08.2001. After completion of the enquiry, the Enquiry Officer gave his findings on 16.10.2001 stating that the charges are proved.

3.Further, the petitioner has received the second show cause notice, on 09.01.2002 and seeking time for submitting his reply and time was also granted to him. In the meantime, the workman, has not produced any evidence to modify the order. Therefore, the respondent imposed the punishment of increment cut for a period of three years with cumulative effect. Thereafter, by order, dated 12.07.2002, the said order was modified as two years increment cut with cumulative effect. As against the said order, the workman has raised an industrial dispute, before the first respondent. After considering the evidence, the first respondent has allowed the said industrial dispute, by setting aside the award passed by the petitioner/Management.

4.On the side of the second respondent/Sangam, no witness was examined and one document Ex.P.1 was marked and on behalf of the petitioner Management, no witness was examined and the documents Ex.R.1 to Ex.R.13 were marked.

5.After analysing both oral and documentary evidence, the Labour Court has passed an award in favour of the workman by setting aside the order of punishment. Challenging the said order, the present writ petition is filed.

6.The learned counsel appearing for the petitioner/Management submitted that while the workman viz., Kulanthairaj was working as a Driver, he met with an accident, wherein, the injured passengers have filed claim petitions before the Motor Accident Claims Tribunal. Therefore, the workman was instructed to appear before the Tribunal to prove the negligence on the part of the claimant therein. However, the workman, without attending the Court, informed the Corporation counsel to give a letter to the petitioner/Management as if he attended the Court and he was also



the petitioner/Management came to know that the workman did not attend the Court, due to which, higher compensation was awarded to the claimants therein, for which, a charge memo was issued and after an elaborate discussion and also the report of the enquiry officer, the authority imposed the punishment, which cannot be interfered by the Labour Court. Hence, he prays for allowing the writ petition.

7.Per contra, the learned counsel appearing for the second respondent submitted that the delinquent is not a party in the MCOP and without issuing summons, the delinquent cannot appear before the MCOP. Further, there is no record available either before the Enquiry Officer or before the Tribunal to prove that the summons was issued to the delinquent. In the absence of any summons or letter to the delinquent for his appearance before the MCOP Court, framing of charges as against the workman Kulanthairaj, is unsustainable in law. Hence, he prays for dismissal of the present writ petition.

8.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent and perused the materials available on record.

9.The facts in the present case are not in dispute. This Court, on perusal of Exs.R1 to 13 reveals that either summons or letter issued to the delinquent for his appearance before the MCOP was not marked. In the absence of any letter or summons to the delinquent for his appearance before the MCOP, the issuance of charge memo and imposing the punishment is not proper in the considered opinion of this Court. Hence, the order of the Tribunal cannot be interfered with. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Presiding Officer,
Labour Court,Thiruchirapally,
(Dindigul Camp)

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-5497[F] dated
17/02/2021)

W.P. (MD)No.6680 of 2011

and

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AS (26.05.2021) 3P 3C

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