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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.04.2022
Pronounced on	26.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.14994 of 2013

S.D.R. Pandian ... Petitioner

Vs.

1.The Presiding Officer,
II Additional Labour Court,
Chennai.

3.Tamil Nadu State Transport Corporation
(Villupuram) Division-II Ltd.,
Rangapuram, Vellore-9. ... 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 impugned Award in I.D.No.827 of 2001 dated 06.08.2012 passed by the first respondent holding that the charges leveled against the petitioner were proved and that the dismissal was justified and declining to grant him any relief quash the same and consequently, direct the second respondent to reinstate him with continuity of service, back wages and all other attendant benefits with award costs.

For Petitioner : Mr.V.Ajay Khose

For Respondent-2: Mr.G. Saravanakumar

O R D E R

The charge against the petitioner, who was employed as a Driver in the second respondent/Corporation is that, on 06.11.1996 an accident took place owing to his negligence and the victim died on the spot. During the course of inquiry, oral and documentary evidences were let in before the Inquiry Officer



general, on the basis of the evidence before it and in particular, on the basis of cross-examination of M.W.1 and M.W.2 before the Labour Court, the Award came to be passed, by holding that the charge of misconduct against the petitioner was established by the Management and the punishment awarded to the petitioner by the Management was not disproportionate to the charge of misconduct. Accordingly, the Industrial Dispute came to be dismissed.

4. The learned counsel for the petitioner predominantly raised a ground stating that, when the Labour Court had held the domestic inquiry to be fair and proper, the Labour Court cannot rely upon the evidence led before it and reject the claim of the petitioner.

5. The learned counsel for the second respondent/Transport Corporation placed reliance on the observations made by the Labour Court in the Award and submitted that, in the ultimate paragraph of the Award, the Labour Court had also taken into account the findings of the Inquiry Officer and therefore, has come to the conclusion that the charges against the petitioner were proved.

6. I have given my careful consideration to the submissions made by the respective counsels.

7. The Hon'ble Supreme Court in a batch of cases in *The Workmen of M/s.Firestone Tyre And Rubber Co. of India (Pvt.) Ltd., V. The Management And Others & etc.*, reported in 1973 (1) SCC 813, had held that after introduction of Section 11A of the ID Act, the Tribunal would be well within its power to deal with the validity of the domestic inquiry, if taken up as a preliminary issue. While holding so, it was held that if such domestic inquiry was held as fair and proper, there will be no occasion for additional evidence being cited by the Management. However, if the findings is against the Management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying its action.

8. By placing reliance on the decision of the *M/s. Firestone tyre and Rubber Company's* case (supra), a Hon'ble Division Bench of this Court in *K.Damodaran V. Presiding Officer, Labour Court, Vellore & Another* reported in 2007 (1) LLN 831, had held that the procedure adopted by the Labour Court in allowing the parties to lead evidence even after holding the inquiry to be valid and proper, is illegal. The relevant portion of the order reads as follows:-



been held to be valid and proper and the Management not seeking any opportunity to lead fresh evidence. This is not warranted in terms of the proviso to Section 11A of the I.D. Act."

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9. This proposition has been reiterated in various decisions of this Court. Thus, when such a ratio is adopted to the present facts of the case, the Labour Court, having found that the domestic inquiry was fair and proper, had placed reliance upon the additional evidence led before it and by placing reliance on the cross examination of M.W.1 and M.W.2, the Labour Court, had come to the conclusion that the charges of misconduct has been established by the Management, which is totally in contravention of the aforesaid legal propositions. Consequently, the Award of the Labour Court, cannot be sustained. However, this Court is of the view that the matter could be remitted back to the Labour Court for fresh consideration, on the basis of the materials on record before the Inquiry Officer.

10. In the result, the impugned Award passed by the learned II Additional Judge, Labour Court, Chennai in I.D.No.827 of 2001 dated 06.08.2012, is quashed and the matter is remanded back to the II Additional Labour Court, Chennai for reconsideration. The Labour Court shall commence the proceedings from the stage of final arguments, after affording due opportunity to both parties to put forth their arguments both oral and written arguments and shall pass an Award in accordance with the materials placed on record in the domestic inquiry, within a period of three months from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. There shall be no orders as to costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

DP/sni
To

1.The Presiding Officer,
II Additional Labour Court,
Chennai.



2.Tamil Nadu State Transport Corporation
(Villupuram) Division-II Ltd.,
Rangapuram, Vellore-9.

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+1cc to Mr.V.Ajoy Khose, Advocate Sr.28995
+1cc to Mr.G.Saravana Kumar, Advocate Sr.28513

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srg 09/05/2022