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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.28178 of 2013

and

M.P.No.1 of 2013

The General Manager,  
Tamil Nadu State Transport Corporation (Villupuram) Limited,  
Vellore Region, Vellore - 632009.

... Petitioner

Vs.

1. Special Deputy Commissioner of Labour Chennai,  
D.M.S Compound,  
Chennai - 600006.

2. K.Deenadayalan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent made in Approval Petition No.176 of 2011 dated 27.12.2012 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.G.Saravana Kumar

For Respondents: Mr.C.Selvaraj, [R1]  
Additional Government Pleader  
Mr.S.T.Varadharajulu [R2]

O R D E R

Based on a charge that one of the passengers in the bus had fallen down and succumbed to the injuries, the second respondent herein, was subjected to disciplinary proceedings. On the basis of proven charges, he was dismissed from service through an order dated 15.06.2011. The petitioner/Corporation had filed an application on the same day under Section 33(2)(b) of the Industrial Disputes Act, 1947, before the first respondent/Authority, seeking for approval of the dismissal



order. Through the impugned order dated 27.12.2012, the Authority found that no prima facie case was made out before the Inquiry Officer and that the one month wages was not fully paid. Insofar as the findings that prima facie case was not made out, the charge against the second respondent was that he had driven the bus in a rash and negligent manner and that he has failed to verify that all passengers had boarded the bus.

2. It is the stand of the second respondent that the passenger who was inside the bus, had a stroke of Epilepsy, owing to which, he fall out of the bus and succumbed to the injuries. The stand taken by the second respondent was supported by two witnesses who were the co-passengers. In spite of such statements, the Inquiry Officer had found the charges to have been proved. Pointing out this discrepancy, the Authority had found that there was no prima facie case and therefore, rejected the order of dismissal.

3. The Hon'ble Supreme Court of India in the case of 'Lalla Ram Vs. D.C.M. Chemical Works Ltd. & another' reported in '(1978) 3 Supreme Court Cases 1', had culled out the scope of jurisdiction of the Industrial Tribunal in dealing with proceedings under Section 33(2)(b) of the Act under five heads, in the following manner:-

.....

"12. The position that emerges from the above quoted decisions of this Court may be stated thus : In proceedings under section 33(2)(b) of the Act, the jurisdiction of the industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co, v. Ram Probesh Singh(1), Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar(2), Hind Construction & Engineering Co. Ltd. v. Their Workmen(3), Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors(4), and Eastern Electric and Trading Co. v. Baldev Lal(5) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether



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it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the game transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

4. The aforesaid extract is self-explanatory. As such, when the Industrial Tribunal/Authority renders a finding that there was no prima facie case for dismissal based on the evidence adduced before the domestic inquiry, such an order would be justifiable.

5. In the instant case, in the absence of any proper oral evidence to substantiate that the death of the passenger was due to the rash and negligent driving of the second respondent, the finding of the Authority in the impugned order cannot be found fault with.

6. In the light of the findings as well as the decision of the Hon'ble Supreme Court, I do not find any infirmities in the impugned order of rejection.

7. Accordingly, the Writ Petition stands dismissed. In view of the dismissal of the present Writ Petition, the second respondent herein, is deemed to have been in service from the date of his dismissal and hence, the petitioner/Corporation, shall pass appropriate orders, extending all service and monetary benefits to the second respondent, including the pensionary benefits. Such an order shall be passed at least within a period of six weeks from the date of receipt of a copy



of this order. No costs. Connected miscellaneous petition is closed.

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Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The General Manager,  
Tamil Nadu State Transport Corporation  
(Villupuram) Limited,  
Vellore Region, Vellore - 632009.
2. The Special Deputy Commissioner of Labour Chennai,  
D.M.S Compound, Chennai - 600006.

+1cc to Mr.S.T.Varadharajulu, Advocate, S.R.No.23335  
+1cc to the Government Pleader, S.R.No.23823

W.P.No.28178 of 2013

SS[co]  
NSK/09/06/2022