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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.32611 OF 2013

The Management,
Tamil Nadu State Transport Corporation
(Kumbakkonam Division II) Ltd.,
Periyamilaguparai,
Tiruchirappalli-620 001
rep. by its General Manager.

...Petitioner

Vs.

1. The Joint Commissioner of Labour (Conciliation),
D.M.S. Compound,
Chennai-600 006.
2. P.Ponnusamy (Deceased)
3. P.Azhagammal
4. P.Palanimuthu

[R3, R4 substituted as LR's of deceased respondent
R2 vide order dated 24.08.2021 made in
WMP.18716/2021 in W.P.32611/2013 by MSRJ]

...Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the order passed by the first respondent in Approval Petition in A.P.No.414 of 2003 dated 28.03.2013 and to quash the same as illegal.

For Petitioner : Mr.D.Venkatachalam

For Respondent-1: Mr.P.Ganesh, GA



For Respondent : Ms.V.Porkodi
Nos.3 & 4

For Respondent 2 : Mr.V.Ajoy Khose

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O R D E R

The second respondent herein, while working as a driver in the petitioner Corporation, was involved in an accident resulting in the death of a cyclist. Through a charge memo dated 06.06.2003, the second respondent was alleged to have driven the bus in a rash and negligent manner and thereby caused the accident. In the inquiry, the only witness from the petitioner Management side was the Branch Manager, who had visited the accident spot. Based on the proved charges, the second respondent herein was dismissed from services on 16.09.2003. On the same day, the petitioner Corporation had filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947, which was rejected by the first respondent through an impugned order dated 28.08.2013, by holding that there was no prima facie case for dismissal based on the legal evidence adduced in the inquiry, for which purpose, the Authority had placed reliance on the decision of the Hon'ble Supreme Court in Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd., & Another reported in 1978 (3) SCC 1. Admittedly, the Branch Manager, who has examined as witness in the inquiry was not an eye witness, but who had arrived at the accident spot after the accident had occurred. Though it is stated that the accident had occurred in a crowded area where there were many bystanders, none of the eye witnesses were enquired in the inquiry for the purpose of establishing the charges of rash and negligent driving of the second respondent. In this aspect, the Authority had taken note of this non availability of the eye witnesses and thereby held that there is no prima facie case based on the legal evidence adduced before the Enquiry Officer and thereby rejected the approval petition. Aggrieved against the same, the present Writ Petition has been preferred by the petitioner Corporation.

2. Heard the learned counsel for the parties.

3. Pending Writ Petition, the second respondent died and he is now substituted by his legal heirs, who are the third and fourth respondent herein.

4. 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) SCC 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 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."

5. 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.

6. In the instant case, in the absence of any eye witness to substantiate that the death of the cyclist was due to the rash and negligent driving of the deceased second respondent, the finding of the Authority in the impugned order, cannot be found fault with.

7. 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. Accordingly, the Writ Petition stands dismissed.

8. In view of the dismissal of the present Writ Petition, the deceased 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 due to the deceased second respondent, including the family pensionary benefits. Such an order shall be passed, atleast within a period of six weeks from the date of receipt of a copy of this order. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Joint Commissioner of
Labour (Conciliation),
D.M.S. Compound,
Chennai-600 006.



2. The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakkonam Division II) Ltd.,
Periyamilaguparai,
Tiruchirappalli-620 001.

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+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.23448
+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.23558
+1cc to the Government Pleader, S.R.No.23824

W.P.No.32611 of 2013

JPL(CO)
PM/20/06/2022