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W.P.No.666 of 2022 & W.M.P. No.716 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.666 of 2022 &
W.M.P. No.716 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Limited
Dharmapuri Zone, Bharthipuram,
Dharmapuri 636 705

... Petitioner

Vs.

State General Secretary
Tamil Nadu Workmen Grievance Redressal Trade Union,
173B, 6th Street, Sakthi Nagar, Thindal,
Erode 638 012

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the order dated 04.04.2017 passed by the Labour Court, Salem, in I.D. No.114 of 2013 and to quash the same.

For Petitioner: Mr.D.Chandrasekaran
Special Government Pleader
Assisted by Mr.K.Raja, Standing Counsel

For Respondent: Mr.K.M. Ramesh, Senior Counsel
Assisted by Mr. V. Subramani



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ORDER

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Challenging the orders dated 04.04.2017 passed by the Labour Court in I.D. No.114/2013, the present Writ Petition is filed by the Tamil Nadu State Transport Corporation (Salem) Limited, Dharmapuri, represented by its Managing Director. The respondent is the State General Secretary of the Tamil Nadu Workmen Grievance Redressal Trade Union, Erode, of which M.Malik John is a member.

2. M.Malik John who was a driver in the petitioner Corporation caused an accident while driving a bus bearing Reg. No.TN 29 N 1718 on the route of Dharmapuri - Thiruvannamalai on 21.10.2010. The victim was a boy who was riding a TVS XL Super two-wheeler. He succumbed to the injuries later in the hospital. The petitioner Corporation charged Malik John, the driver of the bus, with careless and rash driving and issued a charge sheet dated 27.11.2010. He was also placed under suspension. The delinquent driver neither submitted any reply nor attended the domestic enquiry held on 03.02.2011 and 16.03.2011. However, he continued to remain absent in the future hearings and kept sending requests for adjournment. Therefore, the



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enquiry was conducted in his absence on 06.05.2011 after many adjournments. The Enquiry Officer submitted his report on 08.05.2011 holding that the charges against Malik John were proved. Thereafter, on 03.06.2011, Malik John was issued with another notice seeking his explanation for proposed punishment of withholding of increments for 5 years with cumulative effect and treating the suspension period from 25.10.2010 to 27.11.2011 as earned leave. On 30.06.2011 the final order was passed imposing the aforesaid punishment. This was challenged by the respondent Union before the Labour Court, Salem in I.D. No.114/2013.

3. The Labour Court, Salem, after analysing the records, vide its orders dated 04.04.2017 concluded that the Domestic Enquiry which was conducted in the absence of the delinquent driver did not prove the guilt of the employee. According to the Labour Court there were no eye witnesses to the occurrence and the two witnesses who were examined did not find fault with the delinquent employee. It was also concluded by the Labour Court that the principles of Natural Justice was not followed by the Enquiry Officer and that no other records regarding the accident were adduced in the enquiry to show that the negligence was on



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the part of the driver. In such circumstances the Labour Court held that the punishment of withholding 5 increments was unjustified and had no basis. It had also ordered for the disbursement of the terminal benefits without effecting the above punishment.

4. Mr.D.Chandrasekaran, learned Special Government Pleader Assisted by Mr.K.Raja, Standing Counsel for the petitioner contended that the standard of proof required for a domestic enquiry is only 'Preponderance of Probability' and not beyond any 'reasonable doubt' and therefore the Labour Court had erred in exonerating the delinquent driver due to whose negligence the petitioner Corporation had to suffer financial loss not only due to the damages of the bus but also due to the compensation paid to the family of the deceased boy. According to him the delinquent driver deliberately absented himself in all the hearings despite being issued notices for the hearing. It was also contended that the respondent Union at no point of time alleged that the delinquent driver was victimised due to certain extraneous factors.

5. Per contra, Mr.K.M. Ramesh, learned Senior Counsel, assisted by V.Subramani, counsel for the respondent contended that the entire



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process of domestic enquiry was against the Principles of Natural

Justice and that with no iota of evidence against the driver, the enquiry officer had concluded that the former was guilty of rash and negligent driving. It was also argued by him that the delinquent employee had demanded the production of additional documents which was not provided by the enquiry officer and this again showed the bias of the Enquiry Officer who did not conduct the enquiry in a fair manner. In such circumstances, the learned counsel opined that the order of the Labour Court was perfect and unassailable.

6. It is true that the delinquent employee did not attend the enquiry proceedings despite repeated reminders. It is also true that the enquiry was conducted in his absence since the process had to be concluded within a reasonable time. However, the duty and the responsibility of the Enquiry Officer is more in such cases where the delinquent employee absents himself. Though there is no specific explanation for his absence, it is alleged that some of the documents which he had wanted to adduce in the enquiry were not supplied to him. Nevertheless, the crux of the issue is whether with the available oral and documentary evidence the Enquiry Officer was in a position to hold that the charges of rash and



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negligent driving by the driver is proved.

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7. In my opinion, the Labour Court found more than one reason to conclude that the charge never got proved. The first such reason was that the two witnesses who were examined in the enquiry were not eye witnesses to the accident and also that they did not depose that there was negligence on the part of the driver. Therefore, it was concluded by the Labour Court that without substantiating the alleged negligence on the part of the driver, the punishment was imposed on him by the disciplinary authority. I do not find any infirmity in the orders of the Labour Court. Accordingly, the Writ Petition is dismissed as devoid of merits . No Costs. Consequently, connected Writ Miscellaneous Petition is closed.

19.10.2023

bga
Index : yes/no
Speaking /Non speaking Order

To

State General Secretary
Tamil Nadu Workmen Grievance Redressal Trade Union,
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R.HEMALATHA, J.

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