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W.P.Nos.13468 of 2016 & 5053 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.13468 of 2016 & 5053 of 2015

and

M.P.No.1 of 2015

The management,
Tamilnadu State Transport Corporation,
(Villupuram Division-III)
Kancheepuram-631501.

.. Petitioner
(in W.P.No.13468 of 2016)

The Management,
Tamilnadu State Transport Corporation (Villupuram) Ltd,
Kancheepuram Region,
Kancheepuram
Represented by its General Manager

.. Petitioner
(in W.P.No.5053 of 2015)

Vs.

1. The Presiding Officer,
Principal Labour Court, Chennai.

2. M.Venkatachalam

.. Respondents
(in W.P.No.13468 of 2016)



W.P.Nos.13468 of 2016 & 5053 of 2015

Vs.

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1.M.Venkatachalam

2.The Special Deputy Commissioner of Labour (Conciliation),
DMS Compound,
Chennai.

.. Respondents
(in W.P.No.5053 of 2015)

Prayer in W.P.No.13468 of 2016: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any writ, order or direction to call for the records of the order passed by the 1st Respondnt in Approval Petition in C.P.No.339 of 2014 dated 22.12.2015 and quash the same as illegal.

Prayer in W.P.No.5053 of 2015: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other writ, direction or order, to call for the records passed by the 2nd Respondent in A.P.No.85 of 2011 dated 07.06.2013 and to quash the same.

For petitioner
(in both petitions) : Mr.M.Aswin

For Respondents
(in both petitions) : S.Ravi
for R2 in W.P.No.13468 of 2016
for R1 in W.P.No.5053 of 2015



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COMMON ORDER

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Since the issue involved in both the Writ Petitions is one and the same, these petitions are disposed of by way of this common order.

2. The Management State Transport corporation has filed these two petitions challenging the order passed by the Labour Court allowing the claim made by the employee in C.P.No.339 of 2014 and order passed by the Special Deputy of Commissioner (Conciliation) rejecting the approval petition in A.P.No.85 of 2011 filed by the management.

3. The facts in brief are:-

The employee namely M.Venkatachalam was working as a driver in the management corporation. While he was driving a bus from Tambaram to Kancheepuram, the accident had occurred resulting in the motorcyclist died on spot. It is alleged that the employee has driven the vehicle in a rash and negligent manner inviting head-on collision. The employee was charge sheeted on 20.03.2009 which resulted in the enquiry officer rendering a finding that the charge has been proved. Thereafter, the



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employee was sent a show cause notice dated 05.08.2010 calling for explanation for the enquiry officer's report. Not satisfied with the explanation given by the employee and taking into consideration gravity of the misconduct, after receiving a reply to the show cause notice, the management had dismissed the employee on 28.02.2011. Hence, the management has filed approval petition under Section 33(2)-B of the Industrial Disputes Act, 1947 before the Special Joint Commissioner of Labour (Conciliation). The said Approval Petition was dismissed on the ground that the management did not make out a *Prima-facie* case for the dismissal of the employee. Aggrieved by the said order, the management has filed the Writ Petition in W.P.No.5053 of 2015. In the meanwhile, the employee has filed C.P.No.339 of 2014 before the Labour Court seeking computation amount of Rs.6,08,865/- as a sum payable by the management as wages for the period from 28.02.2011 to 17.07.2014. The said claim petition was allowed by the Labour Court. Aggrieved by the same, the management has filed the Writ Petition in W.P.No. 13468 of 2016.

4. Learned counsel for the management would submit that when there is a pendency of the Writ Petition challenging the rejection of the



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Approval Petition, the computation of the amount allowed by the Labour Court is beyond the jurisdiction of the Labour Court. He further submits that since the workman has not proved that it he was not employed elsewhere, the computation of wages did not arise. Learned counsel for the management would submit that, with regard to the rejection of the approval petition on the ground that there are non-examination of the witnesses of the passengers in the enquiry proceedings is illegal. In this regard, he relied upon the judgement of the Hon'ble Apex Court in case of the ***Management of Tamil Nadu State Transport Corporation (Coimbatore) Limited Vs. M.Chandrasekaran*** in Civil Appeal Nos.6765 to 6766 of 2014 dated 02.09.2016. The relevant portion of the Judgement is extracted as hereunder:-

“14. In the present case, the sole reason which weighed with the Commissioner was that no independent witnesses was produced not even a single passenger of the bus was examined by the Department. The decision relied on by the appellant squarely deals even with this reasoning. It has been held that in State of Haryana v.Rattan singh the Court held that mere non-examination of passenger does not render the finding of guilt and punishment imposed by the disciplinary authority invalid. Similar view has been taken in Karnataka SRTCv.A.T.Mane. Both these decisions have been noticed in the reported decision relied on by the



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appellant. The burden to prove that the accident happened due to some other cause than his own negligence, is on the employee, as expounded in Thakur Singh v.State of Punjab referred to in the reported decision. In the resported case relied on by the appellant, it has been noted as under: (Cholan Roadways case, SCC p/253, para 34)”

5. He also relied upon a decision in case of the ***State of Haryana & Another Vs. Rattan Singh***, wherein, the Apex Court has held as under:-

“5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic Tribunal.”

6. Per Contra, learned counsel for the employee submitted that the procedure prescribed under Section 33(2)-B of the ID Act has not been followed by the management. Further, the employee had made an appeal as against the order of dismissal before the managing director. However, during



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the pendency of the said appeal, the management has filed the approval petition which is not in consonance with the provisions of the ID Act.

7. This Court heard the learned counsel appearing on either side and perused the materials available on record.

8. Admittedly, the facts are not in dispute. On a perusal of the order in the approval petitioner, it is seen that the Special Deputy Commissioner of Labour while holding that the employee has been paid one month salary and the charges against the employee has been proved holding that there is no *prima-facie* case made out by the management and hence dismissed the approval petition. The Deputy Commissioner of Labour has said that there are no eye witnesses examined by the management or there is no statement from the eye witnesses. Hence, without examining that the management should not come to a conclusion that the employee is responsible for the accident.

9. What needs to be considered is that the probative value of the evidence showing the fatal injuries caused to the motorcyclist resulting in the death. Further the nature of impact raises an inference that the bus was



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driven by the employee rashly and negligently. The materials relied on by the management during the enquiry stipulated the fact that the employee has driven the vehicle rashly and negligently which was also accepted by the Deputy Commissioner of Labour. The report of the enquiry officer referred to the relevant material established the factum and nature of accident warranting an interference that the employee had driven the bus rashly and negligently. When there is an adequate material during the departmental proceedings by the management evidenced that the accident was caused by the employee while driving the vehicle. The burden to prove that the accident had happened due to some other cause other than his own negligence was on the employee himself. Hence the examination of eye witnesses alone would not be a ground to reject the approval petition. In the case of ***State of Haryana Vs. Rattan Singh*** the Hon'ble Supreme Court while considering whether any domestic enquiry, the rules of Evidence Act will apply, held that merely because of statements of passengers were not recorded that the order of dismissal was invalid. The relevant portion of the order of the Hon'ble Supreme Court is as follows:-

“5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by



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inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic Tribunal."

10. Following the aforesaid decision, the Hon'ble Supreme Court in the case of ***Management of State of Transport Corporation (Coimbatore) Limited Vs.M.Chandrasekaran*** held that mere non-examination that passenger does not render the finding of guilt and punishment imposed by the disciplinary authority invalid. The Hon'ble Supreme Court has held as under:-

"14. In the present case, the sole reason which weighed with the Commissioner was that no independent witnesses was produced not even a single passenger of the bus was examined by the Department. The decision relied on by the appellant squarely deals even with this reasoning. It has been held that in State of Haryana v.Rattan singh the Court held that mere non-examination of passenger does not render the finding of guilt and punishment imposed by the disciplinary authority invalid. Similar view has been taken in Karnataka SRTCv.A.T.Mane. Both these decisions have been noticed in the reported decision relied on by the appellant. The burden to prove that the accident happened due to



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some other cause than his own negligence, is on the employee, as expounded in Thakur Singh v.State of Punjab referred to in the reported decision. In the resported case relied on by the appellant, it has been noted as under: (Cholan Roadways case, SCC p/253, para 34)”

11. In the instant case, there are materials to prove that the employee has driven the vehicle rashly and negligently resulting in the death of the motor cyclist. Further, there are no evidence or documents produced by the employee to substantiate his case that he was not responsible for such an accident. Hence, the Deputy Commissioner of Labour while deciding the approval petition cannot go into the evidence already approved by the enquiry officer during the enquiry proceedings without following the guidelines prescribed in the case of ***Lalla Ram Vs.D.C.M.Chemical Works Ltd and Another.***

12. In the light of the above, the order passed by the Deputy Commissioner of Labour in rejecting the approval petition stands set aside and the order of dismissal passed by the management stands confirmed. Consequently, the Writ Petition in W.P.No.5053 of 2015 stands allowed. The employee is at liberty to challenge the dismissal order in the manner known to law. With regard to W.P.No.13468 of 2016, the employee has filed the claim petition during the pendency of the Writ Petition challenging the order passed in the approval petition.



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13. In the light of the order passed in W.P.No.5053 of 2015 allowing the petition, the consequential order passed in the claim petition filed by the employee seeking computation of the income stands set aside. Accordingly, the Writ Petition in W.P.No.13468 of 2016 stands allowed.

14. In the result, both the Writ Petitions are allowed in the above terms. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

06.07.2023

Index : Yes / No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes / No

NHS

To

1. The Presiding Officer,
Principal Labour Court, Chennai.
2. The Special Deputy Commissioner of Labour (Conciliation),
DMS Compound,
Chennai.

M.DHANDAPANI, J.

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