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W.P. No.38355 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Writ Petition No.38355 of 2015
and M.P.No.2 of 2015

The Management
Tamilnadu State Transport Corporation (Kumbakonam) Ltd.,
Kumbakonam Region
Kumbakonam
Represented by its General Manager ... Petitioner

VS.

1.E.Kalavathi

2.Hariharan

3.Priyangabharathi

4.Andal

5.The Joint Commissioner of Labour (Conciliation)
DMS Compound
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to
pass a Writ of Certiorari, call for the records passed by the 5th respondent in
A.P.No.428 of 2003 dated 11.06.2013 and quash the same.



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For petitioner : Mrs.S.Sathya Gandhi

For respondents : Mr.D.Vaseekaran for R1
RR2 to 4 – No appearance
R5 - Court

ORDER

Challenging the rejection of approval sought, the petitioner Corporation has filed the present Writ Petition.

2.The writ petitioner is the Management of the Tamilnadu State Transport Corporation (Kumbakonam) Ltd., Kumbakonam Region. The case of the petitioner Corporation is that the respondents 1 to 3 are the legal heirs of the deceased – N.Elumalai, who worked as a Driver in the Thanjavur Town 1 Branch; when Elumalai was performing his duty in the vehicle No.TN 49 V0955 R.No.H74, plying between Thanjavur New Bus Stand to Old Bus Stand, at about 6.00 pm., drove the bus rashly and negligently and caused the death of a handicapped pedestrian and also caused revenue loss to the Corporation; that for the said misconduct, charges were framed against him and a domestic enquiry was conducted and based on the report of the enquiry officer, show cause notice was issued on 30.01.2003 proposing the penalty of dismissal from service; that the petitioner Corporation without



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satisfying the explanation of the said Elumalai, by an order dated 21.03.2013, terminated his service.

3. Simultaneously, a petition under [Section 33\(2\)\(b\)](#) of the Industrial Disputes Act was filed by the petitioner Corporation and it came to be numbered as A.P.No.428 of 2003 and the 5th respondent – the adjudicating authority by its order dated 11.06.2013 rejected the approval petition, on the ground that there was a failure on the part of the petitioner Corporation, to make out a prima facie case for the dismissal of the said Elumalai. Hence the Writ Petition.

4. The learned counsel for the petitioner Corporation mainly contended that the jurisdiction of the 5th respondent under [Section 33\(2\)\(b\)](#) of the Industrial Disputes Act, 1947, is a limited one and the said power cannot be equated with that of the [Section 10](#) of the Industrial Disputes Act, 1947. The 5th respondent-Labour Court has to follow the five legal principles settled by the Hon'ble Supreme Court of India in the case of [*Lalla Ram vs. Management of D.C.M. Chemical Works Ltd*](#) [1978 CJ (SC) 182]. Now that the legal principles are settled regarding the procedures to be followed for



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deciding the approval petitions filed under [Section 33\(2\)\(b\)](#) of the Industrial Disputes Act, 1947, the 5th respondent has committed an error in arriving a conclusion with reference to the legal principles settled by the Supreme Court.

5.He would further reiterate that the petitioner- Corporation followed the principles of natural justice by affording complete opportunity to the employee concerned. Thus, there is no infirmity or irregularity in the matter of conduct of domestic enquiry. This apart, the proved misconduct against the employee was grave in nature.

6.The learned counsel appearing for the 1st respondent would submit that there is no perversity or patent error in the findings of the 5th respondent. The stand taken by the petitioner Corporation before two different forum are contradictory and the dismissal of the said employee amounts to unfair labour practice and was intended to victimize him. Since the charges were not proved by any legal and acceptable evidence by examining any direct eye-witnesses, the 5th respondent has recorded its findings, based on the evidence on record and has not exceeded the power and jurisdiction under



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Section 33(2)(b) of the Industrial Disputes Act, 1947 and therefore, the power exercised is within the jurisdiction and accordingly, the writ petition is liable to be dismissed.

7. Heard both sides and perused the materials available on record.

8. On a careful perusal of the order passed by the 5th respondent, it is found that the 5th respondent has gone into entire facts and found that the employee (driver) was acquitted by the Trial Court, in the accident case stating that he did not drive the vehicle in a rash and negligent manner, however, the enquiry officer has failed to take the same into account, but concluded that the workman was guilty of the misconduct of causing the accidents. Further, the 5th respondent given a finding that the petitioner Corporation in their written arguments, filed before the Motor Accidents Claims Tribunal, Thanjavur, stated that the cause of the accident is fully attributable on the victim. Therefore, the petitioner Corporation has taken two different stands, in respect of the same incident, before the two different forum. Therefore, the 5th respondent had rightly arrived at the conclusion that the order of dismissal passed by the disciplinary authority is vitiated in



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law.

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9.For the foregoing reasons, this Court finds no infirmity or illegality in the order passed by the 5th respondent and the challenge made by the petitioner Corporation in the present Writ Petition is devoid of merits and the same is liable to be dismissed.

10.Accordingly, the Writ Petition stands dismissed. No costs.
Consequently connected miscellaneous petition is closed.

Index :Yes/No

31.01.2023

Internet:Yes/No

Speaking order/Non-speaking order

Neutral citation:Yes/No

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To

The Joint Commissioner of Labour (Conciliation)

DMS Compound

Chennai.



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J.NISHA BANU, J.

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ORDER MADE IN
W.P. No.38355 of 2015

31.01.2023