



W.P.No.24830 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.24830 of 2016

and

W.M.P.No.21205 of 2016

The Management,
Represented by its General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Trichy Region,
Trichy – 01. ... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai.

2.B.K.Rajendran ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the 1st respondent in A.P.No.227 of 2010 dated 06.11.2015 and to quash the same.

For Petitioner : Mr.Murali Vinoth
For Respondents : Mr.M.S.Prem Kumar
Government Advocate [R1]



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Ms.S.Kaavya
Legal Aid Counsel [R2]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records pertaining to the order passed by the first respondent in A.P.No.227 of 2010 dated 06.11.2015 and to quash the same.

2. The case of the petitioner is that, the second respondent is employed as a driver at the Jayankondam Depot in the petitioner Corporation. On 30.08.2007, he was assigned duty in bus bearing No.TN 45 N 2150 in bus route from Dindigul to Erode and near Kombuppalayam, the second respondent in a rash and negligent manner dashed against the motorcyclist, which resulted in the death of motorcyclist at the spot and the pillion driver suffered injury, thereby, the Law Enforcing Agency registered a case against the second respondent and the petitioner Corporation initiated disciplinary proceedings as against the second respondent. After conducting departmental enquiry, the second respondent was dismissed from service on 07.12.2010. Thereafter, the petitioner Corporation filed an application in A.P.No.227 of 2010 under Section 33(2)(b) of the Industrial



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Disputes Act, 1947 (in short 'the Act') for approval of termination, which was ultimately rejected by order dated 06.11.2015. Challenging the same, the petitioner Corporation has filed the above writ petition.

3. The learned counsel for the petitioner Corporation submits that, the Labour Court has to consider the approval petition under Section 33(2)(b) in terms of the law laid down by the Apex Court in the case of ***Lalla Ram Vs. Management of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, in which, the Apex Court has prescribed the procedure to be followed while deciding the approval petition. However, contrary to the said procedure, the Labour Court has rejected the approval petition filed by the petitioner Corporation. Accordingly, he prays for allowing the writ petition.

4. Though paper publication was effected and the name of the second respondent was printed in the cause list, however, no one appeared on behalf of the second respondent on 10.08.2023. Therefore, this Court appointed Ms.S.Kaavya as legal aid counsel on behalf of the second respondent vide order dated 10.08.2023.



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5. The learned counsel appearing for the second respondent submits that, the second respondent/workmen entered the service of the petitioner Corporation in the year 1995 and in the year 2007, while he was working as a driver, he driven the bus and dashed against one motorcyclist, who came from the opposite direction, thereby, the motorcyclist sustained fatal injury and lost his life, for which, a criminal case was registered against the second respondent and departmental proceedings was also initiated against him. Before the criminal court, the petitioner Corporation took a plea that the second respondent has not committed any error and the negligence is not on his part, whereas, in the departmental proceedings, the petitioner Corporation took a stand that the negligence is on the part of the second respondent, since he driven the vehicle in a rash and negligent manner. Such a contra stand taken by the petitioner Corporation before the criminal court and the domestic enquiry is not sustainable. Further, after contest, the criminal court acquitted the second respondent and the acquittal order was produced before the enquiry officer. However, the enquiry officer did not render any findings to that effect and the petitioner Corporation had mechanically passed an order of dismissal, which is also not sustainable. The order of dismissal passed by the petitioner Corporation for the fatal



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accident is highly disproportionate and by considering all those facts, the Labour Court dismissed the approval petition, which is perfectly in order. Further, since the second respondent took a plea that one month salary was not properly paid to him and a lesser amount was paid, it is for the petitioner Corporation to prove that one month salary was paid to the second respondent by way of marking documents.

6. In response, the learned counsel for the petitioner Corporation submits that in order to prove that one month salary was paid to the second respondent, they have marked the salary certificate as Ex.A17.

7. Heard the learned counsel for the petitioner Corporation and the learned counsel appearing for the second respondent and perused the materials available on record.

8. Admittedly, the second respondent entered the service of the petitioner Corporation as a driver in the year 1995 and in the year 2007, he was assigned to drive the bus bearing No.TN 45 N 2150 in bus route from Dindigul to Erode. It is also an undisputed fact that the bus which he was



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driving was involved in a fatal accident, which resulted in the death of motorcyclist at the spot and the pillion driver suffered injury, thereby, a criminal case was registered against him. Apart from that, departmental enquiry was initiated against the second respondent. It is well settled law that in departmental enquiry, preponderance of probabilities indicates that if there are reasonable grounds leading to an inference that misconduct was committed, it would be sufficient for initiation of disciplinary proceedings against delinquent official, although evidence may not be required as that of criminal case and need not prove beyond reasonable doubt. In the present case, the criminal court acquitted the second respondent and the acquittal order was produced before the Enquiry Officer and the Enquiry Officer should have considered the same in a prospective manner before drawing proven minute. However, the same was not considered by the Enquiry Officer and the disciplinary authority. As rightly submitted by the learned counsel appearing for the second respondent that the dual stand taken by the petitioner Corporation before the criminal court as well as the department proceedings is not permissible.



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9. Further, without considering the service rendered by the second respondent and there is no previous punishment prior to the present punishment, the petitioner Corporation imposed a major punishment of dismissal from service, which is highly disproportionate and by considering the same, the Labour Court has rightly rejected the approval petition filed by the petitioner Corporation, which is perfectly in order, which cannot be interfered with. Hence, the above writ petition is liable to be dismissed.

10. This Court records the appreciation for the work done by the learned counsel appearing for the second respondent and directs the Member Secretary, Tamil Nadu State Legal Services Authority to pay a sum of Rs.6,000/- (Rupees Six Thousand only) to her as remuneration.

11. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

- 1.The Presiding Officer,
II Additional Labour Court,
City Civil Court Annexure Building,
High Court Compound,
Chennai – 600 104.
- 2.The Member Secretary,
Tamil Nadu State Legal Services Authority.

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