



W.P.No.20818 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.20818 of 2017

And

W.M.P.Nos.21674 of 2017 and 14579 of 2019

The Management
Tamilnadu State Transport Corporation
(Kovai) Limited,
37, Mettupalayam Salai,
Coimbatore – 43
Rep. by its Managing Director

... Petitioner

Vs.

1.V.Govindarajasekar

2.The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai – 6.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the second respondent made in A.P.No.352 of 2013 dated 20.02.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.A.Sundaravadhanam

For Respondents : Mr.L.Mouli for R1

Mr.M.S.Prem Kumar for R2
Government Advocate



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ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records of the second respondent made in A.P.No.352 of 2013 dated 20.02.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

2.The case of the petitioner is that the first respondent was working as Driver under the petitioner. On 13.03.2012 when the first respondent was operating vehicle bearing Registration No.TN38N1798 in route Gandhipuram to Mettupalayam, an accident occurred in which a pedestrian sustained injury and died in hospital on 16.03.2012. Thereafter, the petitioner issued charge memo dated 07.04.2012 to the first respondent and conducted enquiry. Since the Enquiry Officer drawn proven report as against the first respondent, the petitioner issued second show cause notice to the first respondent and thereafter dismissed him from service vide order dated 27.12.2013 and sought for approval under Section 33 (2) (b) of the Industrial Disputes Act before the second respondent, however, the second respondent rejected the approval petition. Challenging the same, the petitioner has filed this writ petition.



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3.The learned counsel appearing for the petitioner submitted that the approval petition was rejected by the Labour Court mainly on two grounds namely, enquiry was not conducted in a fair and proper manner and that the petitioner took dual stand before the Enquiry Officer and before the Motor Accidents Claims Tribunal which is impermissible one, however, the petitioner conducted enquiry in a fair and proper manner. It is the duty cast upon the second respondent to consider as to whether principles of natural justice has been followed or not.

4.The learned counsel appearing for the petitioner further submitted that the petitioner paid one month salary to the first respondent and in order to prove the same, marked Ex.P.18 and also marked salary slip as Ex.P.17, however, the first respondent disputed the salary slip stating that enhanced dearness allowance was not paid to him. Thereafter, during the pendency of the petition under Section 33 (2) (b) of the Industrial Disputes Act, the enhanced dearness allowance was paid to the first respondent, however, the Labour Court rejected the approval petition which is not sustainable one. In support of his contentions, the learned counsel relied upon the decision of this Court in W.P.Nos.33497 to 33505 of 2015 dated 03.02.2016 [the



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Management of Metropolitan Transport Corporation (Chennai) Ltd., Vs.
Thiru.A.Ramesh Babu and another].

5.The learned counsel appearing for the first respondent submitted that the petitioner took dual stand before the Enquiry Officer and the Motor Accidents Claims Tribunal. Before the Enquiry Officer, the petitioner contended that due to the rash and negligent driving of the first respondent the accident took place, whereas, before the Motor Accidents Claims Tribunal, the petitioner contended that due to the negligence on the part of the pedestrian, the accident took place. Such contra stand is impermissible one. Further xerox copy of the certified copy of the counter statement filed by the petitioner in MCOP No.1333 of 2012 before the Motor Accidents Claims Tribunal, Dharapuram, dated 05.06.2013 was marked as Ex.R6 before the Labour Court. After considering all the factual aspects, the Labour Court arrived at a conclusion that without providing necessary opportunity to the first respondent, the petitioner dismissed him from service.

6.The learned counsel appearing for the first respondent further submitted that the petitioner did not pay one month salary along with



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the dismissal order and paid only a sum of Rs.23,048/- to the first respondent. Thereafter, the first respondent disputed the same stating that enhanced dearness allowance was not paid and only thereafter on 07.02.2014 the petitioner sent demand draft dated 03.02.2014 for a sum of Rs.1,226/- to the first respondent during the pendency of the approval petition. Such payment is contrary to Section 33 (2) (b) of the Industrial Disputes Act and is impermissible one and hence, the Labour Court rightly rejected the approval petition, which needs no interference.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.The facts in the present case is not in dispute. Admittedly, the the first respondent was working as Driver under the petitioner. On 13.03.2012 when the first respondent was operating vehicle bearing Registration No.TN38N1798 in route Gandhipuram to Mettupalayam, an accident occurred in which a pedestrian sustained injury and died in hospital on 16.03.2012.

9.It is equally undisputed fact that the petitioner took dual stand



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before the Enquiry Officer and the Motor Accidents Claims Tribunal.

Before the Enquiry Officer, the petitioner contended that due to the rash and negligent driving of the first respondent the accident took place, whereas, before the Motor Accidents Claims Tribunal, the petitioner contended that due to the negligence on the part of the pedestrian, the accident took place. To substantiate the same, the first respondent marked xerox copy of the certified copy of the counter statement filed by the petitioner in MCOP No.1333 of 2012 before the Motor Accidents Claims Tribunal, Dharapuram, dated 05.06.2013 as Ex.R6 before the Labour Court. Such contra stand is impermissible one. Further, enquiry report has not been filed before this Court.

10.Further as per the decision of the Hon'ble Apex Court reported in AIR 1978 © 1004 (Lalla Ram Vs. Dcm chemical Works) the Labour Court has to see whether the enquiry has been conducted in a proper manner or not, whether one month salary has been given or not and principles of natural justice have been satisfied or not.

11.In the present case, admittedly, the petitioner did not pay one month salary along with the dismissal order and paid only a sum of Rs.23,048/- to the first respondent. Thereafter, the first respondent



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disputed the same stating that enhanced dearness allowance was not paid and only thereafter on 07.02.2014 the petitioner sent demand draft dated 03.02.2014 for a sum of Rs.1,226/- to the first respondent during the pendency of the approval petition, which is *per se* illegal and is impermissible one and the same is contrary to Section 33(2)(b) of the Industrial Disputes Act.

12.In view of all the above, this Court is not inclined to interfere with the impugned order. The writ petition is accordingly dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

21.08.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai – 6.



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M.DHANDAPANI,J.
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