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W.P.No.11463 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.11463 of 2017

and

W.M.P.No.12444 of 2017

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Vazhuthareddy, Salamedu,
Villupuram Region,
Villupuram – 605602.

... Petitioner

..Vs..

1. C.Nallathambi

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

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, calling for the records of the second respondent made in A.P.No.22 of 2015 dated 02.06.2016 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : M.Aswin

For Respondents : Mr.A.G.Rajan (for R1)

Mr. R.P.Murugan Raja,
Government Advocate (for R2)



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ORDER

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The Writ Petition has been filed to quash the order in A.P.No.22 of 2015 dated 02.06.2016 on the file of the second respondent.

2. The case of the petitioner is that the first respondent was working as Driver in Kallakurichi Deport-2. While he was driving the bus bearing No. TN32/N3722, due to his rash and negligent driving, he committed a major accident at a place called Kallakurichi Pampu Thottam and he was hit against a tamarind tree. Due to the said accident, one of the passenger has died, 12 passengers have suffered injuries and the bus was heavily damaged though there was no fault/mistake in the working condition of the bus. In pursuance thereof, the first respondent was suspended on 24.03.2014 and statutory subsistence allowance was paid. Since the above rash and negligent driving was a grave misconduct, the petitioner/Transport Corporation on 18.04.2014, framed the charges against the first respondent seeking for his explanation. Further, domestic enquiry was conducted by an Enquiry Officer in which all the charges framed against the first respondent were found to be proved. On receipt of the enquiry report, the petitioner/Transport Corporation sent a notice to



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the first respondent calling for his reply and as the same was not satisfactory, the petitioner/Transport Corporation issued a second show cause notice dated 04.08.2014 to the first respondent seeking his explanation for the provisional conclusion of the dismissal from service. Since the first respondent had not sent any reply, he was dismissed from service on 29.01.2015. While so, the Petitioner/Transport Corporation filed an Approval Petition in A.P.No.22 of 2015 before the second respondent, which was rejected on 02.06.2016 by the second respondent. Aggrieved by the same, the present Writ Petition is filed.

3. The learned counsel for the Petitioner/Transport Corporation submitted that as prima facie case has been made out and there has been sufficient evidence to be appreciated, the first respondent was dismissed from service for his negligent driving. He further submitted that the Hon'ble Supreme Court of India in various decisions held that the test by an authority as under Section 33(2)(b) of the Industrial Disputes Act on such enquiries would be level of only a prima facie view has to be taken and the Tribunal or Labour Court cannot go into the appreciation of evidence aspect. He further submitted that the Petitioner/Transport Corporation has made out a prima facie case and the balance of



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convenience is clearly on the side of the petitioner. Hence, the learned counsel for the petitioner prayed for setting aside the impugned order passed by the second respondent.

4. The learned counsel for the first and second respondents submit that the second respondent has examined the application for approval made by the Petitioner with reference to the relevant aspects stipulated in the decision of the Hon'ble Supreme Court of India in ***Lalla Ram -vs- D.C.M.Chemical Works Ltd.*** [(1978) 3 SCC 1] and as such, the impugned order of the second respondent may be confirmed and the writ petition may be dismissed.

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

6. Upon perusing the impugned order, it is seen that the reason assigned by the second respondent is that the domestic enquiry is vitiated because the eye-witnesses of the accident has not been examined as witness in the domestic enquiry to prove the charge. It would suffice here to refer to the decision of the Hon'ble Supreme Court of India in



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Management of Tamil Nadu State Transport Corporation (Coimbatore)

Limited -vs- M.Chandrasekaran [(2016) 16 SCC 16], where it has been

held that it would not be necessary to examine the eye-witnesses to an accident for which an employee is charged for misconduct of negligent driving as the doctrine of *res ipsa loquitur* would come into play and the burden would shift on the employee who was in control of the bus to establish that the accident did not happen on account of the negligence on his part. It would also be necessary to focus here that the Hon'ble Supreme Court of India in the decision in ***John D'Souza -vs- Karnataka State Transport Corporation*** (Order dated 16.10.2019 in Civil Appeal No. 8042 of 2019) has explained the law relating to the procedure to be adopted in a proceeding for approval under Section 33(2)(b) of the Act with reference to the earlier rulings, as follows:-

"31. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any



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defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified....

34. *It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman,*



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such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the Management on the scale that the standard of proof required therein can be 'preponderance of probability' and not a 'proof beyond all reasonable doubts' suffers from inherent defects or is violative of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part of the enquiry to be held under Section 33(2)(b) of the Act."

7. Therefore, if the second respondent had been of the opinion that the domestic enquiry suffered from any infirmity, he ought to have disclosed it to the parties and thereafter, they ought to have been called upon to adduce their evidence in support of their respective contentions and then finally decided the validity of the domestic enquiry. As it is apparent that the exercise in accordance with the procedure required to be followed in the aforesaid binding decisions of the Hon'ble Supreme Court



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of India had not been carried out by the second respondent in this case, the impugned order cannot be sustained. In such circumstances, the impugned order is set aside and the matter is remanded to the second respondent for conducting de-nova enquiry. The second respondent shall pass appropriate orders within a period of six months from the date of receipt of a copy of this order, after affording an opportunity of hearing to the Petitioner/Transport Corporation as well as the first respondent.

8. In the result, the Writ Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.06.2023

Index : Yes/No
Internet : Yes/No
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To

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



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V.BHAVANI SUBBAROYAN,J.

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