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W.P.No.25276 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25276 of 2017

And

W.M.P.No.26729 of 2017

The General Manager
Tamilnadu State Transport
Corporation (Coimbatore) Limited
Erode Region,
Chennimalai Road,
Erode – 1.

... Petitioner

Vs.

1.M.Murugan

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.137/2012 dated 23.04.2015 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.



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For Petitioner : Mr.M.Murali Vinoth

For Respondents : Mr.J.Suresh K.Ethiraj for R1
Mr.M.S.Prem Kumar for R2
Government Advocate

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.137 of 2012 dated 23.04.2015 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 25.05.2010 when the first respondent was operating vehicle bearing Registration No.TN33N2030 in route Trichy to Tirupur, he dashed against a two wheeler proceeding in the opposite side and also hit against two other two wheelers which were also proceeding in the opposite side and thereby four persons lost their life. Thereafter, the petitioner issued charge memo dated 01.07.2010 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



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and thereafter dismissed him from service vide order dated 04.04.2012.

3.The further case of the petitioner is that thereafter the petitioner filed approval petition under Section 33 (2) (b) of the Industrial Disputes Act, 1947 before the second respondent seeking approval of the order of termination issued to the first respondent and the second respondent vide order dated 23.04.2015 rejected the approval petition. Challenging the same, the petitioner has filed this writ petition.

4.The learned counsel appearing for the petitioner submitted that the second respondent can exercise its power only in terms of Section 33 (2) (b) of the Industrial Disputes Act and as per the decision of the Hon'ble Apex Court reported in AIR 1978 © 1004 (Lalla Ram Vs. DCM chemical Works) the second respondent 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. In the present case, the second respondent conducted detailed enquiry with regard to the



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veracity of the charges made against the first respondent and arrived at a conclusion that the criminal case initiated against the first respondent ended in acquittal and rejected the approval petition which is not sustainable one. The impugned order is liable to be set aside since it is contrary to Section 33 (2) (b) of the Industrial Disputes Act and the decision of the Hon'ble Apex Court reported in AIR 1978 © 1004 (Lalla Ram Vs. DCM chemical Works).

5.The learned counsel appearing for the first respondent submitted that the first respondent joined the service of the petitioner during the year 2007. It is true that there was an accident and that accident occurred due to the negligence of the motor-cyclists, for which, the law enforcing agency registered criminal case against the first respondent and thereafter the first respondent was acquitted. The learned counsel further 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 motor-cyclists, the accident took place. Such contra stand is



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impermissible one and the said fact was rightly considered by the Labour Court. Hence, the impugned order warrants no interference.

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

7.The facts in the present case is not in dispute. Admittedly, the the first respondent was working as Driver under the petitioner. On 25.05.2010 when the first respondent was operating vehicle bearing Registration No.TN33N2030 in route Trichy to Tirupur, he dashed against a two wheeler proceeding in the opposite side and also hit against two other two wheelers which were also proceeding in the opposite side and thereby four persons lost their life.

8.The first respondent had joined the service of the petitioner during the year 2007 and the accident took place during the year 2010. Within a period of three years, he has committed an accident in which four persons have lost their lives.

9.The first respondent claim that the petitioner took dual stand before the Enquiry Officer and the Motor Accidents Claims Tribunal.



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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 motor-cyclists, the accident took place.

10.It is relevant to extract hereunder Section 33 (2)(b) of the Industrial Disputes Act, 1947:

“(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

11.Perusal of Section 33 (2)(b) of the Industrial Disputes Act makes it clear that for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, no such



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workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

12.In the present case, the first respondent committed fatal accident, for which, the petitioner issued charge memo dated 01.07.2010 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 04.04.2012. Thereafter the petitioner filed approval petition under Section 33 (2) (b) of the Industrial Disputes Act, 1947 before the second respondent seeking approval of the order of termination issued to the first respondent and the second respondent vide order dated 23.04.2015 rejected the approval petition.

13.However, the ground on which the approval petition was rejected by the second respondent is that the petitioner took dual stand before the Enquiry Officer and the Motor Accidents Claims Tribunal. However, that has to be decided in a petition filed under



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Section 2 (A) (2) of the Industrial Disputes Act, in terms of Section 11 A of the Industrial Disputes Act and such power is not available to the second respondent.

14.Further in the decision of the Hon'ble Apex Court reported in AIR 1978 © 1004 (Lalla Ram Vs. DCM chemical Works), the Hon'ble Apex Court has categorically held that in a petition under Section 33 (2) (b) of the Industrial Disputes Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to whether a proper domestic enquiry in accordance with the relevant rules/ Standing Orders and principles of natural justice has been held, whether a *prima facie* case for dismissal based on legal evidence adduced before the domestic tribunal is made out, whether the employer had come to a bonafide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee.

15.Hence, the second respondent has no power to re-appreciate the entire findings in the approval petition which is contrary to the decision of the Hon'ble Apex Court reported in AIR 1978 © 1004 (Lalla Ram Vs. DCM chemical Works).



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16.In view of the above, the order of the second respondent made in A.P.No.137 of 2012 dated 23.04.2015 is set aside. Liberty is granted to the first respondent to agitate the issue before the competent forum in the manner known to law.

17.The writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

23.08.2023

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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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