



W.P.No.12181 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.12181 of 2019
and W.M.P.No.12453 of 2019

The Management,
Tamil Nadu State Transport Corporation
(Salem) Limited,
Bharathipuram, Salem Main Road,
Dharmapuri - 5.

... Petitioner

Vs.

G.Periyasamy

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a Writ of Certiorari, calling for the records pertaining to the Orders, dated 12.09.2017 passed by the Special Deputy Commissioner of Labour, Chennai in A.P.No.485/2012 and to quash the same.

For Petitioner : Mr.R.Babu

For Respondents : Mr.K.Balu



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ORDER

The respondent viz., G.Periyasamy, was working as a driver in the Writ Petitioner/Transport Corporation. On 07.11.2010, when he was driving a bus bearing Registration No.TN29 N2016, he hit a two wheeler, as a result of which, the rider of the two wheeler sustained injuries and died. The Writ Petitioner Management issued a show cause notice and after conducting a domestic enquiry, dismissed the respondent from service on 09.08.2012. Thereafter, the Petitioner Management filed an Approval Petition in A.P.No.485/2012 under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the Special Joint Commissioner of Labour, Chennai seeking approval of their action. The learned Special Joint Commissioner of Labour, Chennai vide her Orders dated 12.09.2017, dismissed the Approval Petition on the following grounds:

- i) The Departmental Enquiry has not been conducted properly and there is a violation of principles of natural justice;
- ii) The employee was victimised by the Management;
- iii) The employee was not given one month wages as per Section 25 F



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of the Industrial Disputes Act;

iv) There is a delay of 7 days in filing the approval petition under Section 33(2)(b) of the Industrial Disputes Act.

Aggrieved over the said Order, the present Writ Petition is filed by the petitioner/Transport Corporation.

2. Mr.R.Babu, learned counsel for the petitioner contended that the respondent /driver had driven the bus in a rash and negligent manner, as a result of which, the rider of the two wheeler lost his life. It is also his contention that the departmental enquiry was conducted after giving an opportunity to the delinquent employee and that he was only a reserve driver on the date of occurrence. According to him, the accident took place during the period of training and therefore, the order of dismissal passed by the Management against the employee is perfectly in order.

3. Per contra, Mr.K.Balu, learned counsel appearing for the respondent contended that the Special Joint Commissioner of Labour after analysing the evidence adduced on both sides, had passed a detailed



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orders and there is no reason for this Court to interfere with the same by invoking the provisions of Article 226 of the Constitution of India.

4. It is seen from the records that the witnesses examined on the side of the Management had deposed that both the rider of the two wheeler and the driver of the bus were responsible for the accident. Moreover the Police have also filed a referred charge sheet before the concerned Jurisdictional Magistrate stating that the rider of the two wheeler was rash and negligent in riding his two wheeler. Even assuming that the respondent employee was rash and negligent in driving the bus, the petitioner/Management had not paid one month wages as mandated under Section 25F of the Industrial Disputes Act.

5. In the decision of the Hon'ble Supreme Court in ***Lalla Ram Vrs. D.C.M Chemical Works Ltd.***, reported in ***(1978) 3 SCC 1***, it has been held thus:

"The position that emerges from the above



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quoted decisions of this Court may be stated thus: In proceedings under section 33(2)(b) of the Act, the jurisdiction of the industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Probesh Singh(1), Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar(2), Hind Construction & Engineering Co. Ltd. v. Their Workmen(3), Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors(4), and Eastern Electric and Trading Co. v. Baldev Lal(5) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is



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excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment;

(iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before



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which the main industrial dispute is pending for approval of the action taken by him.

6. In the instant case, there is a delay of 7 days in filing the approval Petition and the same has not been explained properly by the petitioner, Management. Moreover, one month's wage was also not paid to the respondent. Therefore, I do not see any reason to interfere with the orders passed by the Special Joint Commissioner of Labour, Chennai. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking/Non-Speaking order
vum

To

The Special Deputy Commissioner of Labour,
Chennai.



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R. HEMALATHA, J.

vum

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