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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 08.01.2024

Orders Pronounced on : 30.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No. 21702 of 2011

and

M.P.No.1 of 2011

—

The Management of Tamil Nadu State
Transport Corporation
(Villupuram Division II Limited)
Rangapuram
Vellore- 632 009. .. Petitioner

Versus

1.The Presiding Officer
First Additional Labour Court
Vellore District.

2.K. Pugazendhi .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India,

praying for issuance of a Writ of Certiorari to call for the records relating to

<https://www.mhc.tn.gov.in/judis>



I.D.No. 274 of 2003 dated 07.07.2010 on the file of the first respondent herein

and quash the same.



For Petitioner : Mr.M. Aswin

For R1 : Labour Court

For R2 : No Appearance

: Mr. V. Ajay Khose, Advocate
appointed as ***Amicus Curiae*** on 10.10.2023.

ORDER

This Writ Petition is filed by the petitioner/Management of Tamil Nadu State Transport Corporation, Villupuram Division II Limited, challenging the Award passed in I.D.No. 274 of 2003, dated 07.07.2010 by the first respondent herein.

2. The brief facts are as follows:-

(a) The second respondent was employed as a Casual Driver on daily wage basis. On 02.02.2001, while the second respondent was on duty near Vedal Village, a lorry dashed against the second respondent, even though the lorry was stationed and it had hit a tamarind tree, and due to the impact, a passenger (second respondent herein) and the conductor of the bus died.



The bus attached to the petitioner-Transport Corporation was extensively damaged and the said occurrence has happened only because of the negligence of the second respondent.

(b) On 17.03.2001, a charge-memo was issued to the second respondent, calling for explanation and as his explanation was not satisfactory, domestic enquiry was ordered. According to the petitioner/Management, the domestic enquiry was conducted in a fair manner by following the principles of natural justice and by furnishing the documents relied on by the petitioner/Management and the Management permitted the second respondent to cross-examine the witness of the petitioner/Management. Thereafter, the enquiry was completed.

(c) On 09.01.2003, a second show cause notice was issued to the second respondent based on the enquiry report and explanation was called for from the second respondent. Not being satisfied with the explanation offered by the second respondent, the petitioner/Management issued order of termination dated 20.07.2003. The second respondent raised a dispute



before the first respondent-Labour Court in I.D.No. 274 of 2003. The Labour Court directed the petitioner/Management to reinstate the second respondent with continuity of service. Challenging the said order of the first respondent, the present writ petition has been filed by the petitioner/Management.

3. Despite service of notice, the second respondent has not appeared before this Court. Hence, this Court, vide order dated 10.10.2023, appointed Mr.V.Ajay Khose, Advocate, as *Amicus Curiae* to assist the Court.

4. On the side of the petitioner/Management, one Natarajan-MW1 was examined and Exs.M1 to M17 were marked and on the side of the second respondent-employee, no witness was examined and no document was marked.

5. According to the writ petitioner/Management, there is no dispute with regard to the employment of the second respondent herein since 08.02.1996 till the date of his termination on 27.02.2003.



6. The petitioner/Management did not raise any dispute regarding the status of the second respondent as a workman. According to the writ petitioner, they have marked 17 documents and more specifically, the charge-memo dated 17.03.2001 was marked as Ex.M1, which clearly shows that the charges levelled against the second respondent herein have been proved, as Ex.M-2/explanation given by the second respondent dated 30.03.2001 was not satisfactory. Ex.M-3 is the report of the Inspector attached to the petitioner/Management and Ex.M-4 is the rough sketch with regard to the accident, Ex.M-6 is the copy of the FIR and Ex.M-7 shows the details of the injury sustained by the injured persons. Ex.M-12 is the show cause memo issued to the second respondent and Ex.M-15 the further explanation submitted by the second respondent and the final order had been passed by the petitioner/Management as per Ex.M18.

7. According to the petitioner, the first respondent/Labour Court failed to consider the evidence of MW1, who was working as Section Officer in the petitioner/Management. Though there is an eye witness narrating the



accident which had taken place on 02.02.2001 at about 5.30 a.m., the Labour Court failed to note that both the Conductor (Natarajan) of the bus and a passenger (Sathik Basha) had died.

8. The learned counsel for the petitioner-Management relied upon the complaint given by the 2nd respondent herein on 30.03.2001 to the General Manager of the Transport Corporation, stating that he had driven the bus on 02.02.2001 at about 5.30 am towards Chennai and in the place called Vedel Village, where the lorry under dispute, was stationed without any sign, indication or there was not even stones or leaves near the tyre. By suddenly noticing that the lorry was stationed, the second respondent had applied the brake and the bus swerved on the right side and on seeing a vehicle coming on the opposite direction with bright light, he moved the vehicle on the left side in order to avert the major accident and due to which, the bus has dashed against the lorry and then it had hit the tamarind tree. The second respondent has only stated that the accident was purely due to the mechanical defects and there was no stones on the road and even there was



also no indicator to show that the said bus was lying on the road.

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9. The learned *Amicus Curiae* appointed by this Court for the second respondent contended that the enquiry was not conducted in a fair manner by affording an opportunity and there is violation of principles of natural justice by not furnishing the requisite documents to the second respondent-workman. He has also contended that though MW1 was examined and several documents were marked to establish the case of the petitioner/Management herein, viz., Ex.M-1 to Ex.M-17, none of the documents had proved that the accident had taken place only at the behest of the second respondent herein.

10. The learned *Amicus Curiae* also pointed out before this Court that the domestic enquiry was not conducted in accordance with law and therefore, the report of the Enquiry Officer was set aside by the first respondent. It was further contended by the learned *Amicus Curiae* that the order of termination is disproportionate to the charges levelled against the



second respondent herein.

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11. The learned counsel for the writ petitioner/Management had relied upon a judgment of the Honourable Supreme Court in the case of **State of Haryana and Another v. Rattan Singh**, reported in **(1977) 2 SCC 491** and another judgment of the Apex Court in the case of **J.D. Jain v. Management of State Bank of India and Another**, reported in **(1982) 1 SCC 143**.

12. The learned *Amicus Curiae* has relied upon a judgment of the Division Bench of this Court, in the case of **Pandian Roadways Corporation Limited (represented by its Managing Director), Madurai v. The Presiding Officer and another**, reported in **2002 (1) L.L.N. 348**.

13. This Court has perused the documents filed before the Labour Court and also considered the submissions made by the learned counsel for the petitioner/Management and also the submissions of the learned *Amicus*



Curiae. It is evident from the facts that the second respondent was appointed as a driver in the petitioner/Management on 08.02.1996 and from February, 1996 to February, 2003, he was working as a daily worker with continuous service. The petitioner/Management did not raise any dispute with regard to the employment of the second respondent and has recognized his service as a workman. It is clear that the charge memo dated 17.03.2000 was issued against the second respondent.

14. On a perusal of the entire records available before this Court, it shows that, though MW1 during the cross examination admitted that he was not aware of the manner in which the accident took place. He further deposed in the cross examination that 9 persons who were travelling in the bus, sustained injuries, and none of them were examined by the Enquiry Officer who had conducted the domestic enquiry. Ex.M-4 rough sketch demonstrates that the lorry was parked on the left side of the road and there was no indication in the rough sketch that no stones were kept behind or leaves or stones were left to identify that the lorry was stationed there.



15. The judgments relied by the learned counsel for the petitioner in the case of **State of Haryana and Another v. Rattan Singh**, reported in (1977) 2 SCC 491 (*supra*), and Paragraph No.4 of the judgment is relevant, which is extracted hereunder:-

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the Tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does



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not go to that extent nor does the passage from Halsbury insist on such rigid requirements. The simple point is, was there some evidence or was there no evidence—not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record.”

16. In the above case before the Supreme Court, there were allegations levelled against the workman who was working as a Conductor in the State Transport Corporation bus run by the Haryana State Transport Corporation and the allegation was that he did not issue tickets where the squad stopped the bus and conducted an inspection and that 11 persons were travelling in the bus were ticket less travellers. The allegation against the delinquent was that he did not issue tickets to the said 11 passengers who travelled in the bus and charges were framed and finally he was terminated from service. Challenging the order of the trial Court, it is seen that, 11 passengers were examined which were proved to be a misconduct and as against the order



passed by the trial Court, the same was confirmed by the Appellate Court and ultimately, the Supreme Court dismissed the appeal filed by the State of Haryana.

17. The other judgment relied on by the learned counsel for the petitioner-Management, was, in the case of **J.D.Jain v. Management of State Bank of India and Another**, reported in **(1982) 1 SCC 143**, wherein, the relevant Paragraph No. 9 of the judgment is extracted hereunder:-

“9. On a perusal of the evidence recorded by the Enquiry Officer, the Tribunal held that on the evidence before it, the appellant could not be held guilty as, according to it, in the absence of the evidence of Kansal, the evidence recorded was hearsay, with the result that it directed reinstatement of the appellant with full back wages from December, 22, 1973. The respondent moved the High Court under Articles 226 and 227 of the Constitution of India for quashing the award of the Tribunal. The High Court held that the charges against the appellant had been established and quashed the award of the Tribunal. It is against this judgment of the High Court that the present appeal by special leave is directed.”

18. From both the above cases before the Supreme Court, it is a case



of some evidence, but in the case on hand, the allegation levelled against the second respondent-workman is of no evidence and therefore, these two judgments of the Honourable Apex Court cannot be relied upon in respect of the claim of the petitioner/Management.

19. The learned *Amicus Curiae* relied upon the judgment in the case of Pandian Roadways Corporation Limited (represented by its Managing Director), Madurai v. The Presiding Officer, Additional Labour Court, Madurai and Others, reported in 2002 (1) L.L.N. 348 (supra), wherein the relevant paragraph No. 7 of the judgment is extracted hereunder:-

“7...There is no explanation for non-examination of any one of the persons who witnessed the occurrence or standing near the accident spot. Likewise, the corporation has not examined any one of the passengers, who travelled in the bus nor examined their own conductor to speak about the manner of the accident. In the absence of any such evidence, we are of the view that the Labour Court is perfectly right in rejecting the uncorroborated evidence of the Assistant Engineer. The witness-Assistant Engineer has also admitted that he had not obtained statement from the persons who were standing there or from the passengers who travelled in the bus; accordingly his report Exhibit M1 also cannot be accepted. When the



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second respondent explains how the accident had taken place and produce a copy of the judgment of the criminal Court. Exhibits W1 acquitting him from all the charges, it is the duty of the management to place acceptable legal evidence in support of their claim. There was no corroborative evidence except their own witness, namely, the Assistant Engineer who admittedly is not an eye witness.”

20. The non examination of any witness who had travelled in the bus belonging to the petitioner-Management and also non-examination of the injured person as witness before the domestic enquiry or any other person who happened to have witnessed the accident were not examined, would cause serious lacuna, the domestic enquiry is not an empty formality but one of a procedural compliance with all fairness and reasonable care ought to have been taken. In the absence of no material to show before this Court, that the petitioner/Management had taken sufficient steps to establish that the occurrence has purely happened only at the instance of the negligent driving by the second respondent. But, the evidence of MW1 would only show that he has only narrated the occurrence and has not proved how the accident had taken place. In the absence of any minimum material to establish that



the accident had occurred only at the instance of the second respondent herein, it is highly improper to rely upon the evidence of MW1 and exhibits marked as Exs.M1 to M16 on the side of the petitioner-Management.

21. For the foregoing reasons, the Writ Petition filed by the Management, is dismissed as devoid of merits and consequently the petitioner/Management is directed to comply with the findings of the first respondent/Labour Court within a period of twelve (12) weeks from today. This Court places its deepest appreciate to Mr.V. Ajay Khose, Advocate, appointed as Amicus Curiae on 10.10.2023 who had rendered his assistance to this Court, to arrive at a conclusion which is just and proper. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.

30.01.2024

Index:Yes

Speaking order : Yes

Neutral Citation : Yes

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To

The Presiding Officer
First Additional Labour Court
Vellore District.



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N. SENTHILKUMAR, J

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Pre-Delivery Order

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Order pronounced on 30.01.2024