IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.2.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.17229 of 1997
AND
W.P.M.P.Nos.27278 of 1997 and 198 of 2001

The Management of
Dheeran Chinnamalai
Transport Corporation Ltd.,
rep. by its General Manager,
Periamilaguparai,
Trichy-1. .. Petitioner

Vs.

1. The Presiding Officer,
   Industrial Tribunal,
   Tamil Nadu,
   Chennai-104.
2. A.Thangaraju .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari as stated therein.

* * *

For petitioner : Mr.R.Parthiban
For respondents : Mr.P.K.Rajagopal for R2.
R1-Tribunal.

* * *

O R D E R

The above writ petition has been filed praying to issue a writ of certiorari to call for the records of the first respondent, the Industrial Tribunal, Chennai in Approval Petition No.33/91 dated 25.2.1997 in I.D.No.62/82 quash the same.

2. The case of the petitioner is that the second

respondent was working as a Driver in the petitioner's Corporation; that on 1.9.1990 at about 1.15 p.m. he drove the bus rashly and negligently and caused the death of a pedestrian and cause revenue loss to the Corporation; that for the said misconduct, charges were framed against him and a domestic enquiry was conducted and based on the report of the enquiry officer, show cause notice was issued on 30.11.1990 proposing the penalty of dismissal from service; that the petitioner without satisfying the explanation of the second respondent, by an order dated 8.3.1991, terminated the service of the second respondent; that along with the order of dismissal, a cheque towards one month's salary was issued and simultaneously, a petition under Section 33(2) (b) of the Industrial Disputes Act was filed before the first respondent, since a dispute regarding bonus was pending before the first respondent in I.D.No.62/82.

3. The further case of the petitioner is that the first respondent by its order dated 25.2.1997 rejected the application filed by the petitioner on the ground that the basic documents on which the charges have been framed were not furnished to the second respondent before the enquiry and failure to furnish these documents would amount to denial of natural justice and that none of the eye witnesses have been examined in the enquiry and therefore, there was no evidence and that the order of dismissal was vitiated on account of the fact that the Management had not sent a copy of the enquiry report and it is only testifying the validity of the said order, the petitioner has come forward to file the above writ petition on such grounds as brought forth in the grounds of writ petition.

4. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the second respondent contra and the materials placed on record have also been perused.

5. During arguments, the learned counsel for the petitioner management would submit that along with the order of dismissal, a cheque towards one month's salary was issued; that thereafter, a petition under Section 33 (2) (b) of the Industrial Disputes Act was filed before The Presiding Officer, Industrial Tribunal, Chennai 600 104. The learned counsel for the petitioner would further submit that the

order of dismissal was vitiated on account of the fact that the Management had not sent a copy of the enquiry report, is an incorrect finding.

6. The learned counsel would further submit that in a case arising under the industrial Disputes Act, the industrial Tribunal has an obligation to go into the evidence on record, after permitting the management to let in additional evidence, if necessary, to independently analyse the evidence to come to a conclusion as to whether the charge was proved or not. Not following the same, it is very much clear to understand that the order of the first respondent has vitiated.

7. At this juncture, the learned counsel appearing on behalf of the petitioner would cite a judgment reported in MANAGEMENT OF THIRUVALLUVAR TRANSPORT CORPORATION, LTD., MADRAS AND (1). K. AYYAVU (2). THE PRESIDING OFFICER, LABOUR COURT, TIRUNELVELI (2003 (3) L.L.N. - 705), wherein it is held as follows:-

> "The petitioner management had not examined any eye witness and that if at all it was a case of only error of judgment and the principles of res ipsa loquitur would not apply. The learned counsel laid particular stress on the acquittal of the first respondent by the criminal Court. The learned counsel also relied on the judgment of the Supreme Court in SYED AKBAR Vs. STATE OF KARNATAKA (AIR 1979 SC 1848) and a decision of a Bench of this Court in the MADRAS AND SOUTHERN MAHRATTA RAILWAY COMPANY, LTD., Vs. JAYAMMAL (I.L.R.48 Mad.417)."

8. Two other judgments also would be cited on the part of the petitioner, the first one delivered by a single Judge of this Court reported in 2004(I) LLN 572 wherein it is held:

> "part of the preliminary award in going into the correctness of the version of the management at that stage was totally out of context. That part of the preliminary award will have to be ignored. The version of the same witness can be independently assessed on

merits of the misconduct. Doctrine of *res ipsa loquitor* would apply."

9. Yet another judgment cited on the part of the petitioner is of the Hon'ble Apex Court reported in 2005(I) LLJ 569, wherein it is held:

"Against a rejection by the Industrial Tribunal of its approval application made under Section 33(2)(b) of the Industrial Disputes Act, 1947, which rejection was confirmed by a single Judge and a Division Bench of the High Court the appellant-Roadways persisted in its efforts through the present appeal. Its persistence proved successful. The approval sought was granted by the Supreme Court, even while allowing the appeal. It observed that once the principle of *res ipsa loquitur* was applicable to a case, as it was in this case, the burden of proof would shift to the delinquent."

Based upon the above said arguments, the learned counsel appearing for the petitioner would pray this Court to allow the above writ petition.

10. The learned counsel appearing on behalf of the second respondent would submit that the basic report was not furnished to the respondent along with the show cause notice or with the charge memo; that the eye witnesses were not examined before the enquiry Officer and also the findings of the enquiry Officer were not furnished to the respondent along with the second show cause notice; that the disciplinary authority without looking into the records in proper perspective, passed the order of dismissal.

11. On the part of the second respondent also three judgments would be cited, the first one delivered by a learned single Judge of this Court in W.P.No.12954 of 1992 dated 27.8.1992, wherein it is held:

"The Tribunal has considered the evidence on record, and finding that the evidence is totally insufficient to hold that the charges are proved, has come to the conclusion that the findings of the enquiry officer are perverse.

The Tribunal is entitled to do so."

12. The second judgment cited is one reported in 2000 (7) SCC 72, wherein it is held:

> "A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or any individual in particular . It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution."

13. In the last judgment cited on the part of the second respondent is one reported in 2002(I) LLN 388, wherein the punishment was based on the evidence of only one witness who had not seen the accident and no other eye-witness was examined, it has been held:

> "the findings of the enquiry officer is perverse and cannot be sustained. In the circumstance of the case there is no justification to even give an opportunity to the management to impose any minor misconduct."

14. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner management and that of the second respondent delinquent what comes to be known is that in an accident occurred due to the alleged rash and negligent driving on the part of the second respondent caused the death of a pedestrian, thus causing revenue loss to the petitioner corporation and for the said misconduct, a domestic enquiry had been conducted and based on the report of the enquiry officer issuing a show cause notice the management terminated the service of the second respondent further issuing a cheque for one month's salary and on a petition filed under Section 33(2)(b) of the I.D Act before the first respondent, the first respondent by its order dated 25.2.1997 rejected the

application filed by the petitioner opining that the petitioner did not furnish the basic documents to the second respondent based on which the charges were framed, which would amount to denial of justice and that none of the eye-witnesses have been examined and it was a case of no evidence and further since the copy of the enquiry report has not been furnished along with the second show cause notice the order of dismissal became vitiated and it is against this order the petitioner management has come forward to file the above writ petition. The questions raised and the orders passed as found in the foregoing paragraph are basic, vital and quite legal. Without compliance of these legal requirements of furnishing the documents along with the show cause notice which the management relied on, the non examination of the eye-witnesses before the enquiry officer and non furnishing of the enquiry report along with the second show cause notice definitely vitiate the dismissal order passed by the disciplinary authority and it needs no more discussion or verification since it came to be established that these legal requirements which are highly necessary without which any domestic enquiry held or the decision arrived at including the award of punishment would only vitiate in law and the same has been rightly arrived at by the Labour Tribunal below.

15. The maxim of *res ipsa loquitor* in the light of the non compliance of the legal requirements would not arise and it needs to be explained; that the doctrine of *res ipsa loquitor* could only be pleaded regarding the case coming to be proved on facts and circumstances, but the same cannot be put against non compliance of the legal requirements and therefore, all the judgments cited on the part of the petitioner laying emphasis on the maxim of *res ipsa loquitor* do not become applicable to the case of such nature in hand.

16. On a careful perusal of the Award of the Labour Court below, this Court is able to find that the Labour Court has not only traced the facts and figures in full but also in application of the norms of law it would find serious lapses committed in the domestic enquiry held by the management as pointed out supra and on such legal failures would ultimately arrive at the conclusion to hold that the order of dismissal

arrived at by the disciplinary authority vitiated in law. Since this Court is not able to find any legal inconsistency or infirmity or error apparent on the face of the order of the Labour Court below or perversity in approach by the Award of the Labour Court passed, it could only be held confirming the same and hence the following order:

In result,

(i) the above writ petition is without merit and the same is dismissed as such;

(ii) the Award dated 25.2.1997 passed by the Industrial Tribunal, Chennai in Approval Petition No.33/91 in I.D.No.62/82 is confirmed.

(iii) No costs.

(iv) Consequently, W.P.M.P.Nos.27278 of 1997 and 198 of 2001 are also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gr.
To
1. The Presiding Officer,
Industrial Tribunal,
Tamil Nadu,
Chennai-104.
+1cc to Mr. R. Parthiban, Advocate Sr.No.9612

+1cc to Mr. P.K.Rajagopal, advocate SR.No.9338

JRG(co)
KAA 15.03.05

W.P.NO.17229 of 1997
28.2.2005