

The Management Vs. the Joint Commissioner of Labour

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Court : Chennai

Decided On : Oct-28-2011

Judge : K.Chandru, J.

Acts : Industrial Disputes Act - Sections 33(2)(b), 17-b

Appeal No. : Writ Petition (MD)No.7230 of 2007

Appellant : The Management

Respondent : The Joint Commissioner of Labour

Judgement :

1. The petitioner is the State owned Transport Corporation having Headquarters at Kumbakonam. In this writ petition, they have come forward to challenge an order passed by the first respondent, the Joint Commissioner of Labour Conciliation, Chennai in A.P.No.285 of 2003. By the order, dated 03.05.2006, the first respondent Conciliation Officer refused to grant approval to the petition filed by the management under Section 33(2)(b) of the Industrial Disputes Act. Challenging the same, the present writ petition came to be filed.

2.The writ petition was admitted on 31.08.2007. Pending the writ petition, the management did not seek for any interim order. However, on notice from this Court, the second respondent management filed M.P.(MD)Nos.1 and 2 of 2008 seeking interim direction to pay monthly wages in terms of Section 17-b of the Industrial Disputes Act and also to pay back wages. This Court by an order,

dated 25.06.2008 disposed of both the applications stating that since the management did not sought for any interim order, the management was directed to reinstate the second respondent within two weeks without prejudice to the rights of the parties. Accordingly, the management gave an order of reinstatement, dated 26.10.2008 and it was made clear that he will be reinstated without prejudice to the outcome in the main writ petition. Accordingly, the second respondent joined the service on 26.10.2008. But he had a grievance that though he was reinstated, he was only treated as new entrant and therefore, he filed M.P.(MD)No.1 of 2009 directing the management to pay salary on par with other workers. That application came to be dismissed by this Court on 26.10.2009 stating that it has no relevance to the case on hand. Therefore, the management continues to keep the petitioner only as a new entrant.

3.It is seen from the records that the second respondent was employed as a driver. While he was driving the bus in Chidambaram to Trichy route on 30.04.2003, the bus met with an accident at Melapalur and hit against a two wheeler TVS-50 motor cycle and caused fatal accident. This led to framing of a charge sheet against the workman. After an enquiry was conducted, on the basis of the enquiry report, a second show cause notice was given to him. He was finally dismissed by an order, dated 19.08.2003. Since at that point of time, certain conciliation proceedings were pending before the first respondent, an approval petition under Section 33(2)(b) filed seeking approval of the action of the management.

4.The authority entertained the application in A.P.No.285 of 2003 ordered notice to the second respondent. After hearing both sides, the authority held that there was no procedural infirmity in the petition filed by the management. He further held that the offerings of one month's pay in lieu notice was in order and that the application was filed without delay. The authority found that Ex.A-10 which is the findings of the Enquiry officer was perverse as he had not taken note of the defence pleaded by the workman in his written statement. The findings were only based upon the opinion of the Branch Manager. It was a categoric stand of the workman that he had tried to avert the accident. The uncontroverted testimony given by him that inasmuch as the defence pleaded by the second respondent was not considered

by the Enquiry Officer and as it was only based upon statement of the Branch Manager though he was not an eye witness to the accident it was held to be perverse. Thus, he declined to grant approval to the action taken by the Management.

5.Challenging the order passed by the first respondent, it was contended by the management that the findings of the Enquiry Officer are proper and not perverse and the concept of 'res ipsa loquitur' will apply the accident in question and the authority has a very limited jurisdiction. It was also held that evidence was established that he did not drive the vehicle slowly. The evidence of M.W.1 that the accident could have been avoided if the brakes are applied and it cannot be taken note of. But however, the fundamental flaw namely that the workman who himself eye witness to the accident gave a particular version of the incident and that the enquiry officer must have taken note of the same and should have discussed in the same report about the acceptance or otherwise of the said defence. Otherwise, the report can be said to be one sided and perverse.

6.In the present case, the question of res ipsa loquitur will apply if there was no evidence of the two wheeler rider was available and when the workman had clearly stated that he was driving the vehicle slowly and he was attempting to avert the accident and it was only the two wheeler rider who suddenly came in from the left side cannot be disbelieved and hence, there is no case made out to interfere with the impugned order passed by the first respondent. Though the management contended that there was an independent analysis of the evidence and accepted the findings of the Enquiry officer the order passed by the petitioner management clearly showed that they have merely reproduced the finding of the enquiry officer and had accepted the same. Therefore, they had made an independent assessment of the evidence was not borne out from the records. Further, the workman himself had been reinstated pending the writ petition.

7.Therefore, under these circumstances, this Court is not inclined to interfere with the impugned order passed by the first respondent. Accordingly, the writ petition stands dismissed. No costs.