

(1982) 02 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 4994 of 1978

Management, Kottabomman Transport Corporation

APPELLANT

Vs

M. Lucas and Others

RESPONDENT

Date of Decision : 05-02-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 11A

Citation : (1983) 1 LLJ 458

Hon'ble Judges : Sathia Dev, J

Bench : Single Bench

Judgement

1. Kattabomman Transport Corporation, the Petitioner herein, is seeking for quashing the Award of the Labour Court passed in I.D. No. 123 of

1977 dated 20 September, 1978, whereby it had directed that First Respondent had to be reinstated with continuity of service. He was dismissed

from service by Petitioner Corporation for rash and negligent driving, which resulted in an accident on 15 September, 1976, resulting in the death

of a Cyclist First Respondent, who was employed as a driver was therefore charge-sheeted on 17 September, 1976, and he submitted his

explanations, which were found unsatisfactory, resulting in an enquiry being held, and ultimately, an order of dismissal was passed on 29

November, 1976. First Respondent, was prosecuted in C.C. No. 210 of 1976 on the file of Chief Judicial Magistrate, Nagercoil under S. 304A

Indian Penal Code and he was acquitted by judgment dated 27 November, 1977 in any event by given benefit of doubt in his favour. It was held in

the said judgment, that ""there was an error of judgment on the part of the accused"". It is thereafter on a reference made under S. 10(1)(c) of the

Industrial Disputes Act, as to whether the nonemployment of First Respondent

was justified, the Labour Court following the decision in The Tirunelveli Tuticorin Electric Supply Co. Ltd. Vs. The Industrial Tribunal and Another, held that the non-employment was not justified and he has to be reinstated with continuity of service, but without back-wages and costs.

2. The first point taken is that is that the Labour Court has committed an error apparent on the face of the order in just relying upon the decision in

The Tirunelveli Tuticorin Electric Supply Co. Ltd. Vs. The Industrial Tribunal and Another, , overlooking the material fact that the order in the

disciplinary proceedings was passed on 20 November, 1976, whereas the First Respondent was acquitted one year thereafter on 27 November,

1977, and hence, in the light of what has been held in Anglo-American Direct Tea Trading Company Ltd. Vs. Labour Court and Others, , the later

acquittal by itself, could not be a ground for ordering reinstatement. The only reason given, for ordering reinstatement, is "in view of the principles

mentioned in the decision referred to above, the order of dismissal cannot be upheld". Mr. Sanjay Mohan, Learned Counsel for the Petitioner quite

rightly contends that the later order of acquittal cannot be the sole ground for setting aside the order of dismissal, particularly when the Criminal

Court itself has held that there was "an error of judgment on the part of the accused". The charges framed in the enquiry also deal with

contravention of Rules of road and killing a Cyclist, apart from the other charges regarding rash and negligent driving thereby causing such an

accident and bringing ill-repute to the organisation among the members of the public. The Enquiry Officer held that the First Respondent had driven

the vehicle very fast and he has contravened the rule of the road by driving the vehicle on the right hand side of the road, which was the cause for

the death of the cyclist. Ultimately on 29 November, 1976, the order of dismissal was passed, since the explanations given were not satisfactory.

3. When the conclusions have been so arrived at, not only on the aspect of rash and negligent driving, but on other grounds, the contention of Mr.

Selvaraj, Learned Counsel for the First Respondent that on identical charges, the Criminal Court having acquitted him, he cannot once over be

held responsible in the disciplinary proceedings, cannot be acceded to. Apart from it, in the light of what has been held by this Court in Anglo-

American Direct Tea Trading Company Ltd. Vs. Labour Court and Others, when

the order in the disciplinary proceedings had been passed earlier to that of the acquittal by Criminal Court, unless the Tribunal for valid reasons holds that the order passed in the domestic enquiry was illegal or contravened the principles of natural justice or that the findings are not based on evidence; merely by following the decision in *The Tirunelveli Tuticorin Electric Supply Co. Ltd. Vs. The Industrial Tribunal and Another*, it cannot set aside the order of dismissal. It has not endeavoured to give any finding as to how the findings arrived at in the enquiry, cannot be upheld. Except to list out the exhibits which have been marked and to the findings rendered by the Criminal Court, it has failed to analyse the evidence, without which an order of dismissal in the domestic enquiry cannot be set aside. Hence the sole ground relied upon being unavailable and bound by the decision of this Court in *Anglo-American Direct Tea Trading Company Ltd. Vs. Labour Court and Others*, the need has arise for the matter being remitted to labour Court for proper disposal.

4. Yet another contention taken by the Petitioner is that the standard of proof which is required in a criminal case is different from the nature and the manner of proof which has to be complied with in domestic enquiries and also before the Labour Court. The acquittal having been based on benefit of doubt, it does not prevent the labour Court to go into the evidence already adduced and render its conclusions as to how far the findings in the domestic enquiry can be sustained or not. Even in the Criminal Court, a conclusion had been arrived at that there was an "error of judgment on the part of the accused". It is by such error of judgment, he had driven the vehicle on the wrong side of the road and killed a Cyclist. Such manner of irresponsible driving of a public vehicle, being not only contrary to the rule of road but also by committing error of judgment in not avoiding the Cyclist, are very relevant factors which have to be taken into account by a Corporation to avoid recurrence of such actions being committed by drivers in the larger interests of travelling public and also users of road. The framing of charges in the departmental enquiry and the finding arrived at cannot be got over by merely relying upon an acquittal in criminal case, in which, only one of the charges came up for consideration. Such a significant aspect had not been taken into account by the Labour Court and it has resorted to a short cut method of setting

aside the order of dismissal. If it is to interfere with the order in the domestic enquiry, it can do so, only by demonstrating that the findings arrived at are not based on evidence or that the charges have not been established and the like. This sort of analysing evidence and rendering findings for the conclusion arrived at, being one of the pre-requisites before setting aside an order of dismissal, and when there is total absence of such exercise on the part of the Labour Court, the impugned order suffers from an error apparent on the face of the record.

5. If the dismissal was unjustified, and the workman is to be reinstated, it is not known as to how and why the Labour Court had deprived him of the right to get back-wages. This only shows to what extent it has failed to comprehend the manner in which, such proceedings are to be conducted. Now that the matter is remitted, depending on the conclusion arrived at, in the event of non-employment being found unjustified, as requested by Mr. Selvaraj, it shall take into account S. 11A of the Industrial Disputes Act and dispose of the matter in accordance with law. The Labour Court is directed to dispose of the matter in accordance with law on or before 1 April, 1982.

6. Hence the Writ Petition is allowed. No costs.