

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 10527 OF 2006

Tamilnadu State Transport
Corporation (Madurai) Ltd.,
Tirunelveli rep. by its
Managing Director

...Petitioner

Vs.

1. The Joint Commissioner of
Labour (Conciliation)
D.M.S Compound, Teynampet
Chennai -6.

2. K. Jayaraj

...Respondents

PRAYER: This Writ petition is filed under Article 226 of Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records of the 1st respondent in Approval Petition No.85 of 2004 dated 01.06.2005 and quash the same and pass further orders.

For Petitioner : Mr. P. Paramasivadoss

For Respondents : Mr. R. Govindasamy, AGP for R1
Mr. C. Manohar for R- 2.

O R D E R

This writ petition was directed against the impugned order passed by the Joint Commissioner of Labour, the first respondent herein, in and by which the Approval Petition of the petitioner Management, the Tamil Nadu State Transport Corporation, Madurai Division II, filed under Section 33(2) (b) of the Industrial Disputes

Act, 1947 seeking approval of the Authority for the dismissal of the second respondent Mr.K.Jayaraj, Driver 8461 was refused, on the following three grounds :

1. The enquiry into the charges framed against the Opposite party had not been conducted according to the principles of natural justice.
2. The findings of the enquiry officer are perverse as they had been given without considering the evidences before him and therefore a prima facie case had not been made out against the opposite party.
3. The Applicant had not established that it had paid or offered to pay to the Opposite Party his one month's wages at the time of his dismissal.

2. Learned counsel appearing for the petitioner Management would submit that the second respondent remained unauthorisedly absent from work, w.e.f. 03.10.2003 while serving as a Driver in Madurai Branch. He was charge sheeted for having not joined duty. The said charge sheet was sent to his residential address by registered post with acknowledgment due. But it was returned by the postal department stating "out of station". Therefore, the charge sheet was displayed on the notice board of the branch and two witnesses were obtained. In the notice dated 25.11.2003 it was informed to the second respondent that an enquiry would be conducted on 06.12.2003. But the said enquiry notice was returned with the postal endorsement that the second respondent is not in that address.

3. Adding further, learned counsel appearing for the petitioner would submit that when the second respondent was informed to return to duty by registered post with acknowledgement due, that postal cover was sent back with the postal remark that he has 'Left'. After some time, when there was no response to a charge memo sent to his residential address by registered post with acknowledgment due and this was also returned by the postal department with an endorsement "out of station" and the earlier notice sent by registered post with acknowledgment due dated 06.10.2003 shows the postal remark as "Left", again on 07.10.2003 and 08.10.2003, the postal remark shows that he was not available in the address. Since repeatedly, the postal remarks showed that the second respondent refused to receive the notice asking him to return to duty and also the charge memo, again a notice for enquiry was sent on 25.11.2003 informing the second respondent that an enquiry would be conducted on 06.12.2003. However, that was also returned with the postal

endorsement "Not available". Therefore, the notice of enquiry was displayed on the notice board in the presence of two witnesses. Subsequently, enquiry was conducted and the enquiry officer also gave his finding holding that the charges against the second respondent as proved. After examining the findings of the enquiry officer, the disciplinary authority issued a second show cause notice dated 18.12.2003, asking him to show cause as to why he should not be dismissed from service. This second show cause notice was sent to the residential address of the second respondent through registered post acknowledgement due. This was also returned by the postal authorities with an endorsement that the 'addressee was not found in the address'. Therefore, the second show cause notice was also displayed in the notice Board of the department in the presence of two witnesses. Only thereafter, the petitioner came to know that the second respondent had gone abroad. After proper and thorough verification of the relevant documents, the order of dismissal was issued to him on the ground that he had caused dislocation of the operation of the bus service of the petitioner. After passing the dismissal order the petitioner filed Approval Petition before the first respondent, the Joint Commissioner of Labour (Conciliation) Chennai, under Section 33(2)(b) of the Industrial Disputes Act, 1947 seeking approval of its action in dismissing the second respondent. But, the first respondent without even verifying whether the notice asking him to join duty and the charge memo dated 10.11.2003 were served on the second respondent properly or not, wrongly decided the issue as though the notice calling upon him to report for duty and also the charge memo issued to the petitioner calling upon him to submit his explanation, were not served on him properly.

4. Adding further, he stated that when the question of absent from duty from 03.10.2003 was the issue before the Domestic enquiry and also the issue to be gone into by the Joint Commissioner of Labour (Conciliation) Chennai, the first respondent herein, without even considering any document to prove the case of the second respondent whether he had really suffered any illness, ignoring even the postal remarks on the notices that were sent repeatedly to the residential address of the second respondent, erroneously refused to grant approval, holding that the enquiry into the charges framed against the second respondent had not been conducted according to the principles of natural justice. On this core alone, the first respondent came to the conclusion that the findings of the enquiry officer were perverse. Taking the basis that the enquiry was not conducted in compliance to the principles of natural justice, once again, the first respondent had held that the petitioner had failed to establish that he had paid or offered to pay to the second

respondent his one month's salary at the time of dismissal. Therefore, the entire exercise that has been misconstrued by the first respondent is liable to be set aside.

5. In reply, learned counsel appearing for the second respondent would submit that the findings given by the first respondent that no notice has been sent to the correct address of the second respondent is absolutely in order and hence the same shall not be interfered with. Adding further, he contended that when the petitioner Management sent the second show cause notice the address has been written as No.21-A Veeraperumal Koil Street, Soolakarai, Virudhunagar. Whereas the correct address of the second respondent is No.121-A Veeraperumal Koil Street, Soolakarai, Virudhunagar. Therefore, the claim of the petitioner that they have been sending all communications, namely, the notice calling upon the second respondent to report for duty, the charge memo and the second show cause notice sent to the second respondent's address calling upon him to submit his explanation should not be given a seal of approval by this Court since the same have been sent to a wrong address. Therefore, the second respondent was prevented from submitting his written explanation on the report of the enquiry officer to the disciplinary authority. Hence, the contention taken by the second respondent, not to grant approval since neither show cause notice nor any communication whatsoever sent by the petitioner was served on the second respondent, providing reasonable opportunity to explain his case to the Management, cannot be found fault with. Concluding his argument, he further submitted that the second respondent has been paid with only 17-b payment till date and he has left with only three years to retire from service and if the writ petition is dismissed, confirming the order passed by the first respondent, with a further direction to pay the backwages, no prejudice would be caused to the petitioner.

6. Heard learned counsel appearing for the parties on both sides.

7. As the second respondent remained absent from duty as a driver from 03.10.2003, a notice was sent to him to return for duty, to the correct address namely, 121-A Veeraperumal Koil Street, Soolakarai, Virudhunagar. The postal remarks show that the second respondent was out of station. However on verification it was found that he was not out of station. Therefore, he was issued with a charge memo on the ground that he was evading from duty. The said charge sheet dated 10.11.2003 was issued by the petitioner against the second respondent. But, the charge memo was refused by the

second respondent on 15.11.2003 since the postal remarks clearly shows that the second respondent 'refused' to receive the same. In view of refusal by the second respondent, the said charge memo was pasted in the notice board of the Corporation. Subsequently, as there was no reply the petitioner Management appointed Thiru K. Ramalingam, as an enquiry officer. He has also sent notice to the second respondent to appear for enquiry on 06.12.2003. Again the said notice was also returned on 27.11.2003. In view of the above, the enquiry officer proceeded with the enquiry with one Thiru K. Sivasubramaniam, Branch Manager as a Management witness and 11 documents were marked as Exhibits. Admittedly, as the second respondent abstained from participating in the enquiry, the Enquiry Officer gave his finding that the charges were proved. Thereafter, a second show cause notice was sent to the second respondent along with a copy of the enquiry proceedings informing the provisional conclusion arrived in the disciplinary proceedings taking into account the past records. But records show that the second show cause notice was not sent to the correct address. In fact, the correct address of the second petitioner was No.121-A, Veeraperumal Koil Street, but the second show cause notice was sent to No.21-A Veeraperumal Koil Street. A perusal of the address given by the petitioner in the second show cause notice clearly shows that the second respondent was not afforded with a reasonable opportunity while conducting the enquiry.

8. Therefore, this Court is of the view that the enquiry stood vitiated. However that itself will not give any leniency in favour of the second respondent, yet taking note of the fact that he is left with only three years of service, this Court finds no merits in the Writ Petition.

9. Accordingly, the Writ Petition is dismissed and the order passed by the first respondent in the Approval Petition No.85/2004 is modified to the extent that the second respondent is entitled for reinstatement. However, it is made clear that the petitioner is entitled to be paid with only 50% of backwages, with continuity of service. Further, the second respondent is directed to make full contribution. At this point of time, learned counsel appearing for the second respondent fairly stated that instead of directing the second respondent to make contribution, direction may be given to the petitioner Management to deduct the same from the 50% backwages. Accepting the statement, the petitioner is directed to pay 50% backwages to the second respondent, after deducting the contribution that is liable to be made by the second respondent. The said exercise shall be done within a period of two months from the

date of receipt of a copy of this order. No order as to costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

avr

To

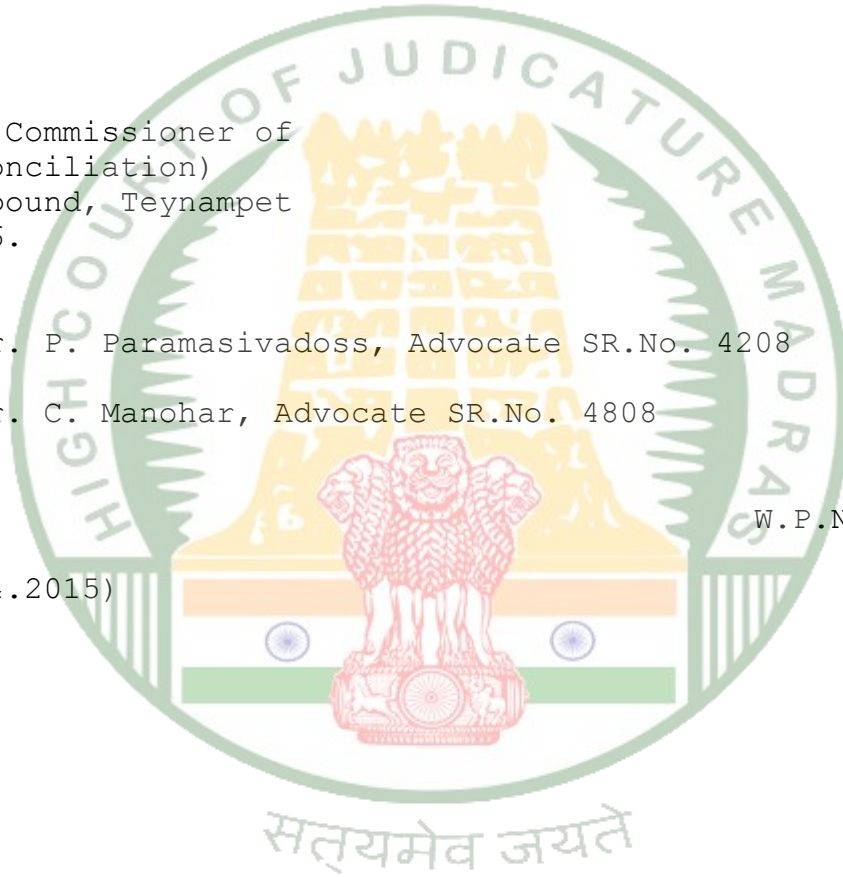
The Joint Commissioner of
Labour (Conciliation)
D.M.S Compound, Teynampet
Chennai -6.

1 CC to Mr. P. Paramasivados, Advocate SR.No. 4208

1 CC to Mr. C. Manohar, Advocate SR.No. 4808

CNR (CO)
PSI (01.04.2015)

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