

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2016

C O R A M

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.21106/2014 & 21108/0214 & MP.Nos.1&1/2014

The Management
Tamilnadu State Transport
Corporation [Salem] Ltd.,
Salem Region,
Salem represented by its
General Manager

..Petitioner in both the
writ petitions

Vs

1.K.Dhanaraj ..R1 in WP.No.21106/2014

2.R.Sugumaran ..R1 in WP.No.21108/2014

3.The Special Joint Commissioner of
Labour [Conciliation], DMS Compound
Chennai. ..R2 in both the writ
petitions

Petitions filed under Article 226 of the Constitution of
India praying for the issuance of a Writ of certiorari calling
for the records passed by the 2nd respondent in AP.Nos.156/2013
and 157/2013 dated 31.10.2015 and to quash the same.

For petitioner in
both the writ petitions ... Mr.P.Paramasiva Doss
For R1 in WP.No.21106/2014... Mr.M.Selvam
For R1 in WP.No.21108/2014... Mr.K.S.Jeyaganeshan
For R2 in both petitions ... Mr.R.Rajeswaran, Spl.GP

COMMON ORDER

Heard the learned counsel for the petitioner ;
Mr.M.Selvam, learned counsel appearing for the 1st respondent in
WP.No.21106/2014 ; Mr.K.S.Jeyaganeshan, learned counsel
appearing for the 1st respondent in WP.No.21108/2014 and
Mr.R.Rajeswaran, learned Special Government Pleader appearing
for the 2nd respondent in both the writ petitions. and with
their consent, the writ petition is taken up for final disposal.

2 Since the issue involved and the petitioner/Management in both the writ petitions are one and the same, the writ petitions are disposed of by the following common order.

3 In both these writ petitions, the petitioner is the Management of the Tamilnadu State Transport Corporation, Salem Region and the challenge is to the orders passed by the 2nd respondent in the Approval Petition Nos.156/2013 and 157/2013 dated 31.10.2013. Though both the approval petitions were rejected by the orders dated 31.10.2013, they are separate orders concerning two employees of the petitioner/Management, who are the first respondent in the respective writ petitions. The legal issue raised in these writ petitions lies in a very narrow campus and to decide the said issue, it may not be necessary to elaborately state about the facts of the cases and it would suffice to note that the respective 1st respondent in both the writ petitions were charge-sheeted for certain delinquencies and the explanation submitted by them having found to be not satisfactory, domestic enquiry was conducted and the Enquiry Officer has submitted the report holding that the charges are proved. Furnishing copy of the Enquiry Report to the respective 1st respondent, the Management sought for their further explanations on the provisional conclusion to dismiss them from service. The employees/respective 1st respondent submitted their explanations and not being satisfied with the same, the Disciplinary Authority/Management dismissed them from service by orders dated 08.09.2010 and 02.08.2010 respectively. Since during the relevant point of time, a dispute was pending conciliation, the petitioner/Management filed petitions for approval of the order of dismissal before the 2nd respondent. In both the cases, the 2nd respondent framed four issues for consideration, namely as to,

[1] Whether a proper domestic enquiry was conducted in accordance with the relevant Standing Orders and principles of natural justice had been followed? ;

[2] Whether a prima facie case of dismissal based on legal evidence adduced before the domestic Tribunal is made out? ;

[3] Whether the employer had come to a bonafide conclusion that the employees were guilty and the dismissal did not amount to an unfair labour practice and was not intended to victimise the employees? ; and

[4] Whether the employees have been paid one month salary in compliance of section 33[2][b] of the Industrial Disputes Act,1947 ["the Act"]?

4 In both the cases, the 2nd respondent decided the Issue Nos. 1, 2 and 3 in favour of the petitioner / Management. Thus, the 2nd respondent was satisfied that the domestic enquiry was fair and proper and there was a prima facie case for dismissal of the employees and such decision was based on legal evidence adduced before the Domestic Tribunal and the Management had come

to the bona fide conclusion that the employees were guilty and dismissing them from service would not amount to unfair labour practice and there was no victimisation. While deciding the issue No.4, the 2nd respondent considered the two letters given by the officials of the Management showing the monthly salary of the respective employees. In the case of K.Dhanaraj, by letter dated 15.07.2011, the concerned official stated that the monthly salary payable to him was Rs.18,298/-. Insofar as the employee R.Sugumaran, the Authority has stated that his monthly salary was Rs.15,941/-. It is not in dispute that out of Rs.18,298/-, Rs.15,588.70p. was paid to K.Dhanaraj and out of Rs.15,941/-, Rs.15,712.50p., was paid to Sugumaran. The difference in payments were also subsequently paid, but of course, after a period of four months. Taking note of this fact, the 2nd respondent held that the difference amounted to non-compliance of section 33[2][b] of the Act and declined approval. Thus, it has to be seen as to whether the orders passed by the 2nd respondent is sustainable and whether the Management failed to comply with the provisions of the Act.

5 Section 33 of the Act states that conditions of service, etc., to remain unchanged under certain circumstances during the pendency of proceedings. In terms of sub-section 2 of section 33 of the Act, during the pendency of any such proceedings in respect of an Industrial Dispute, the employer may, in accordance with the Standing Orders, alter the service conditions applicable to the workman or for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise the workman. Proviso under section 33[2] of the Act provides that no such workman shall be discharged or dismissed unless he was paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending, for approval and the action taken by the employer.

6 The Hon'ble Apex Court in the case of LALLA RAM Vs. D.C.M. CHEMICAL WORKS reported in AIR 1978 [SC] 1004, considered the scope of section 33[2][b] and while pointing out the scope of enquiry, five parameters were mentioned, of which, parameter [iv] would be relevant which is to the effect that the Tribunal should be satisfied whether the employer has paid or offered to pay wages for one month to the employee? Therefore, it has to be seen as to whether the petitioner / Management had offered to pay or paid wages for one month. Admittedly, substantial amount has been paid to both the employees/workmen and it is a case where the wages have been paid. Furthermore, in the order of dismissal itself, the Management has specifically undertaken to pay any difference that may arise. This has also been stated in the Approval Petitions. From the petition filed before the

authority, it is seen that the difference pertains to the Variable Dearness Allowance and the Housing Allowance, which is said to depend upon the Variable Dearness Allowance. Admittedly, there is no dispute with regard to the payment of the basic salary. Therefore, when the petitioner / Management has paid the amount and has offered to pay the remaining balance, if any, which may accrue and the same also having been paid subsequently, the orders passed by the 2nd respondent refusing the approval of the order of dismissal is not tenable.

7 As pointed out earlier, the Apex Court, while interpreting the jurisdiction of the Tribunal while considering an application under section 33[2][b] of the Act, pointed out that the Tribunal should see whether the employer has paid or offered to pay the wages. In the instant case, the employer has not only paid wages, but offered to pay the difference in wages and the difference in wages has also been paid subsequently.

8 In the light of the above, the impugned orders calls for interference. Accordingly, the impugned orders in Approval Petition Nos.156/2013 and 157/2013 dated 31.10.2013 are hereby set aside.

9 Having held that the orders refusing to grant approval is not tenable, this leaves us with the only question as to what would be the appropriate punishment in the instant case.

10 It may be true that the workmen were charged of righteous behaviour and abusing the senior officials when there was a discussion going on in the rest room. It is pointed out that the employees/workmen would be attaining the age of superannuation shortly.

11 Considering the overall circumstances of the case and the fact that the workmen were out of employment from the year 2010 onwards and one of the employees, viz., R.Sugumaran, did not even have the benefit of wages under section 17-B of the Act, these are the fit cases where the petitioner / Management should consider imposing any other lesser punishment other than dismissal and such re-consideration shall be made by the petitioner / Management within a period of three weeks from the date of receipt of a copy of this order.

12 With the above direction, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

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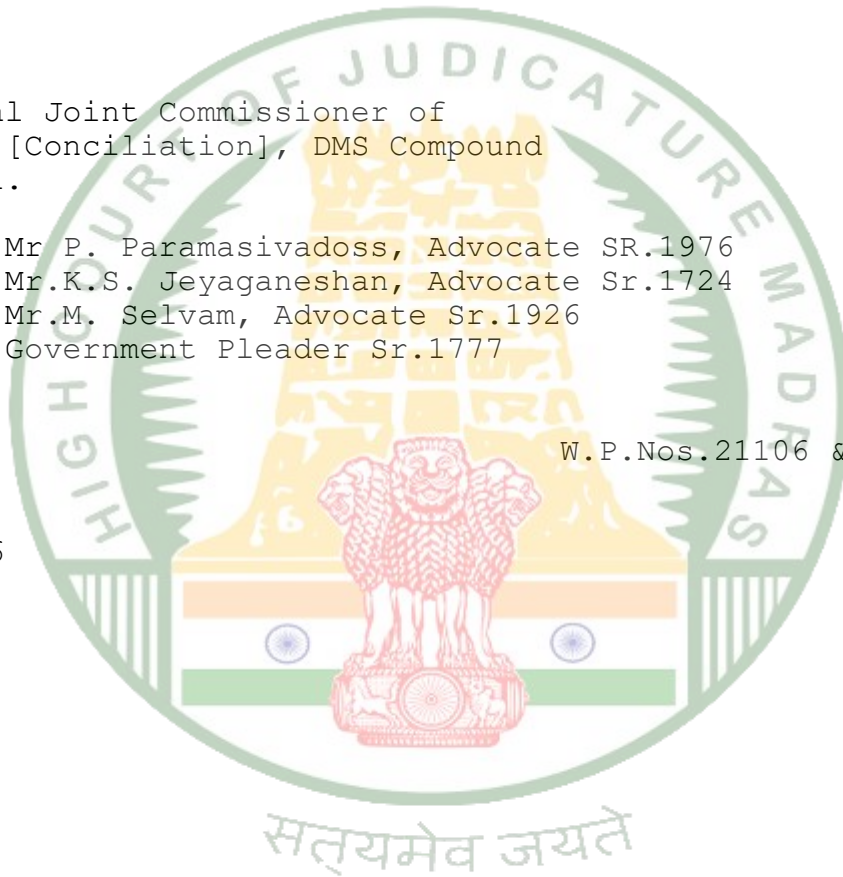
Sub Assistant Registrar

AP
To
The Special Joint Commissioner of
Labour [Conciliation], DMS Compound
Chennai.

+ 1 cc to Mr P. Paramasivados, Advocate SR.1976
+ 1 cc to Mr.K.S. Jeyaganeshan, Advocate Sr.1724
+ 1 cc to Mr.M. Selvam, Advocate Sr.1926
+ 1 cc to Government Pleader Sr.1777

W.P.Nos.21106 & 21108/2014

NM(CO)
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