

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.2557 of 2013 and
M.P.No.1 of 2013

The Management
State Express Transport Corporation T.N. Ltd.,
Pallavan Salai, Chennai - 600 002. ... Appellant

Vs

1. The Joint Commissioner of Labour
(Conciliation), Chennai.
2. D.Kaliyaperumal ... Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters
Patent to set aside the order dated 03.02.2012 made in
W.P.No.29538 of 2007.

Writ Prayer: Writ Petition Filed under Article 226 of Indian
Constitution Praying for a issue of a Writ of Certiorari to call
for records and quash the order dated 05/01/2007 in A.P. 50 of
2005 Passed by the First respondent, Joint Commissioner of
Labour (conciliation) Chennai.

For Appellant : Mrs.Kala Ramesh

For Respondents : Mr.V.Anandhamoorthy, AGP for R1
Mr.A.V.Raja for R2

JUDGMENT

[made by P.VELMURUGAN, J.]

This writ appeal has been filed to set aside the order
dated 03.02.2012 made in W.P.No.29538 of 2007.

2 The second respondent was appointed as a Tradesman in the
appellant corporation on 01.04.1982. He was issued with a charge
memo on 01.01.2004 for un-authorized absence from 17.12.2003 for
which the management conducted domestic enquiry exparte. The
charges against him were proved. In continuation of the enquiry,
second show cause notice was issued on 23.09.2004. Subsequently
the second respondent was dismissed from service on 14.03.2005.
Thereafter an Application was made by the appellant/Corporation

in A.P.No.50 of 2005 under Section 33(2)(b) of the Industrial Disputes Act, 1947, seeking approval for the dismissal of the second respondent.

3 The first respondent/Joint Commissioner after enquiry refused to accord approval for the dismissal made by the appellant/Corporation, by order dated 05.01.2007. The only ground on which the application was refused is that the time interval between the order of dismissal and the date of application for approval was considerable.

4 Aggrieved by the order dated 05.01.2007 in A.P.No.50 of 2005 on the file of the first respondent/Joint Commissioner, the appellant/ Corporation filed a writ petition before this Court in W.P.No.29538 of 2007.

5 The learned Single Judge after hearing both sides dismissed the writ petition by order dated 03.02.2012. The learned Judge referred to the decisions of the Hon'ble Supreme Court which says that both the dismissal/discharge and the making of an application for approval of the same should be done simultaneously and without any delay.

6 Aggrieved against the order dated 03.02.2012 made in W.P.No.29538 of 2007, the appellant is before this Court with the present appeal.

7. Heard the rival submissions made on both sides and perused the materials available on record.

8. It is not in dispute that the second respondent remained absent unauthorisedly from 17.12.2003 for which a charge memo was issued to him on 01.01.2004. Domestic enquiry was conducted exparte, and the charges against the second respondent were held proved. Subsequently, the second respondent was dismissed from service on 14.03.2005. The application made by the appellant for approval of the order of dismissal of the second respondent was dismissed by the first respondent, on the ground of delay of 24 days in filing the application.

9 From the arguments advanced by both the counsels, we are of the considered view that the learned Single Judge has rightly dismissed the writ petition filed by the appellant by citing the law laid down by the Hon'ble Supreme Court. The operative portion of the order of the learned Single Judge is reproduced hereunder:

9. The Supreme Court in the judgments cited have considered as to what was meant by the "same transaction" and held it has to be seen in the facts and circumstances of each case. In the case of Calcutta State Transport Corporation vs.

Md.Noor Alam report in AIR 1973 Supreme Court 1404, the Supreme Court held that a day's delay cannot be said to be material consequence so long as it was clear that the employer had meant to do all the three things as part of one and the same transaction. In the case of Strawboard Manufacturing Company Vs.Gobind reported in 1962 Vol I LLJ 420, the Supreme Court rejected the argument that approval should be obtained before dismissal. The Supreme Court had held the word "simultaneously" must of course be taken reasonably and a motion of split-second timing should not be imported. It should be done at once and without delay. In the present case, the Authority had categorically held that 24 days delay was unexplained and therefore the time gap is too large."

10 In view of above reasoning, we are of the opinion that there is no illegality or infirmity in the order passed by the learned Single Judge. The appellant has not made out any valid case to interfere with order dated 03.02.2012 in W.P.No.29538 of 2007. There is no merit in the appeal.

11 In the result, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

cgi/tar
To

The Joint Commissioner of Labour
(Conciliation), Chennai.

+1 CC TO M/s.Kala Ramesh, Advocate SR. No.12752
+1 CC TO MR.A.V.Raja, Advocate SR. No.12622

W.A.No.2557 of 2013 and
M.P.No.1 of 2013

SS (CO)
RMP (26/03/2018)