

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.8279 of 2017
& WMP Nos.9070, 17016 and 17017 of 2017

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathi Puram, Salem Main Road, Dharmapuri. ... Petitioner
..vs..

1. The Special Deputy Commissioner of Labour,
DMS Complex, IV Floor, Teynampet,
Anna Salai, Chennai 600 006.

2. M.Govindharaj ... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records pertaining to the order passed in A.P.No.291 of 2012, dated 06.11.2015, on the file of the first respondent herein and to quash the same.

For Petitioner : Ms.Rajani Ramadoss
For Respondents: : Mr. K.K.Ramesh, for R1
Mr.V.Ajoy Khose - for R2

O R D E R

The writ petition has been filed by the Management challenging the dismissal of the Approval Petition, wherein the learned Special Deputy Commissioner of Labour, Chennai, rejected the Approval Petition, on the ground that: (a) the petition is filed belatedly; and (b) as the enquiry report is not filed, it is not possible to decide, whether domestic enquiry had been conducted in accordance with the guidelines adumbrated in Lalla Ram v. DCM Chemical Works, AIR 1978 (SC) 1004.

2. The dates and events relating to the dispute between the management and the workman is furnished hereunder for the easy reference:-

- 20.09.2011 : 2nd respondent was appointed and worked as Conductor.

- 02.01.2012 : Onwards absented to the duty.
- 27.01.2012 : Charge memo was issued as it was a grave misconduct as per clause 16(E) of the Model Standing Order of the Corporation
- Domestic enquiry was ordered and the same was held in fair and proper manner.
- 21.07.2012 : Enquiry Officer's report. 28 times - 2nd respondent was punished.

None of the punishment was challenged.

- 12.10.2012 : Dismissed from service.
- 26.10.2012 : A.P.No.291 of 2012, approval petition was filed. 2 documents were filed and marked on the TNSCTC. 10 documents were filed on the employee's side.

Finding : (i) Domestic enquiry proceeding was not filed.

(ii) Not filed the A.P. in time.

- 06.11.2015 : A.P.No.291 of 2012 rejected."

3. Both sides were heard extensively on the contentions raised by them in the writ petition.

4. When this Court expressed the view that, instead of paying 17 (B) wages, the workman could be taken into service and current wages can be paid, then the possibility of finally disposing the issues were also discussed.

4.1. Under the circumstances, affidavit has been filed on behalf of the petitioner-Management expressing the terms and conditions under which reinstatement should take place. The exact reproduction of the affidavit read as under:-

"a) the 2nd respondent ought to have forego the entire back-wages.

b) the 2nd respondent ought to undergo medical fitness before the Board.

c) the continuity of service and pay scale based upon the last drawn salary when the 2nd respondent was terminated from service.

d) the 2nd respondent may not compare the proposed pay fixation of his co-employee's present salary to the above facts are true."

5. With regard to the above terms and conditions, the learned counsel representing the workman was also heard.

6. Condition Nos.(a) and (b) in the affidavits are accepted by the workman without any modification.

7. So far as condition Nos. (c) and (d) are concerned, they are modified subject to the approval of both sides.

8. In the light of the agreement reached by both sides, the following order is passed, in this writ petition:-

"(i) Reinstatement of the workman is ordered and that would be without any monetary benefits from the date of dismissal till the date of reinstatement. However, the workman will be entitled to current wages from the date of their joining.

(ii) During the period of non-employment, the contribution payable to the Pension Fund Trust by the employer shall be paid. Workman is not entitled to bonus for the period of non-engagement / non-employment.

(iii) The workman is entitled to the benefits of intervening 12 (3) settlement. The continuity of service, increment due and other benefits shall be on notional basis for the purpose of calculation of eligible period of pension."

9. In the light of the above order, the dismissal of the Approval Petition is hereby confirmed. Subject to the above conditions, the writ petition is ordered in the above terms. No costs. Consequently, the connected WMPs are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

kst

To

The Special Deputy Commissioner of Labour,
DMS Complex, IV Floor, Teynampet,
Anna Salai, Chennai 600 006.
+1 CC to Govt. Pleader sr 68166.

Writ Petition No.8279 of 2017
& WMP Nos.9070, 17016 and 17017 of 2017

SP(05/12/2018)