

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.02.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.7981 of 2011

and

M.P.No.1 of 2011

Tamil Nadu State Transport
Corporation,
(Salem Division II) Ltd.,
Bharathipuram,
Salem Main Road,
Dharmapuri-636 705

..... Petitioner

vs.

1.The Joint Commissioner
of Labour (Conciliation),
Chennai.

2.A.Swaminathan(died)

3.A.Thanikachalam

4.A.Venkatesan

5.A.Gopalakrishnan

6.S.Karunambigai

7.A.Varalakshmi

... Respondents

R3 to R7 substituted as LR's in the
place of deceased respondent(R2) as
per order dated 9.10.2014 by
MMSJ in W.P.No.7891 of 2011

Petition filed under Article 226 of the Constitution of
India praying to issue a writ of certiorari calling for the
records of the first respondent in AP No.255 of 2003, dated
08.05.2009 and to quash the same.

For Petitioner .. Ms.Rajeni Ramdoss

For Respondents .. Mr.J.S.Saravanel for R2
Mr.J.Ramesh,A.G.P.,for R1
No appearance for R3 to R7

ORDER

The present writ petition is filed by the Transport Corporation against the refusal of Approval Petition filed by the Management in Approval Petition No.255 of 2003 vide order dated 08.05.2009.

2. According to the Petitioner/Transport Corporation, earlier a Charge- memo was issued on 21.08.2001 for unauthorised absence of the deceased workman from 25.07.2001 onwards and an enquiry was held. On conclusion of the enquiry, a second show cause notice was issued on 10.01.2002 and in response to the same, the deceased workman has offered his explanation on 13.02.2002. Accepting the explanation given by the workman, the deceased workman was allowed to rejoin duty on 15.03.2002.

3. While so, on 25.04.2002, the workman remained absent and therefore, a dismissal order was issued on 01.07.2003 for his absence from 25.04.2002. In view of the pendency of certain dispute between the Management and the deceased workman, an Approval Petition No.255 of 2003 was filed before the first respondent. The petitioner Corporation filed its counter stating that the deceased workman was dismissed for misconduct of remaining absent unauthorisedly. In the meanwhile, the workman also died on 25.04.2013.

4. The first respondent refused to grant approval for dismissal of the deceased employee on the ground that for his unauthorised absence from 25.04.2002, no domestic enquiry was conducted and no materials were produced before the authority that any charge memo was issued or any enquiry was conducted for the deceased employee's absence from 25.04.2002.

5. It was an admitted case of no enquiry by the petitioner Corporation and therefore, the Transport Corporation was found to be in gross violation of the principles of natural justice. According to the first respondent authority, no permission has also been sought by the Transport Corporation to lead evidence. In the absence of charge memo, domestic enquiry and request to lead evidence, the first respondent, by the impugned proceedings, has held that the Approval Petition deserves to be dismissed and hence dismissed the Approval Petition. The said order is under challenge before this Court.

6. Although the learned counsel for the petitioner Corporation had submitted that earlier a charge memo was issued and domestic enquiry was conducted and second show cause notice also was issued for proved misconduct of the workman on 10.01.2002, considering the explanation offered by the workman, he was allowed to rejoin duty on 15.03.2002. Since, he remained unauthorisedly absent once again, the earlier departmental enquiry against him had been revived and dismissal order was passed. However, the first respondent authority has unfortunately overlooked this aspect and concluded that no fresh charge memo and domestic enquiry had been conducted in respect of the workman's absence from 25.4.2002.

7. At this, the learned counsel appearing for the legal heirs of the deceased workman would submit that the fact remains that the dismissal order, for which the approval has been sought, is for the absence by the deceased workman from 25.04.2002, for which admittedly no charge memo was issued and no domestic enquiry was conducted. Therefore the first respondent authority has rightly refused to grant approval, since the dismissal order suffers from violation of natural justice.

8. This Court is in agreement with the submission made on behalf of the counsel for the deceased workman. It is an admitted fact that the dismissal order passed, without following the due process of law, cannot be approved at all. Although earlier there was a domestic enquiry conducted in respect of the absence of the deceased workman from 25.07.2001, however, accepting the explanation submitted by the deceased workman, he was allowed to rejoin duty on 15.03.2002. On the workman rejoining duty, earlier domestic enquiry has come to an end in favour of the deceased workman. Therefore, the conduct of domestic enquiry in regard to the earlier unauthorised absence cannot be pressed into service, while dismissing the workman for his absence subsequently on 25.04.2002.

9. In case, the petitioner/Transport Corporation wanted to take disciplinary action against the workman for his subsequent unauthorised absence, it ought to have initiated fresh disciplinary action against him. Admittedly, such action has not been initiated by the Transport Corporation and in such an event, the first respondent authority has rightly rejected the Approval Petition. In the absence of charge memo or domestic enquiry, an order of dismissal from service cannot be passed, as such order would be in gross violation of natural justice. Therefore, this Court finds no error in the order passed by the first respondent and hence the present writ petition is without merits and substance and therefore, the same is liable to be dismissed.

In the result, the writ petition stands dismissed. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

msk

To

1.The Joint Commissioner of Labour (Conciliation), Chennai.

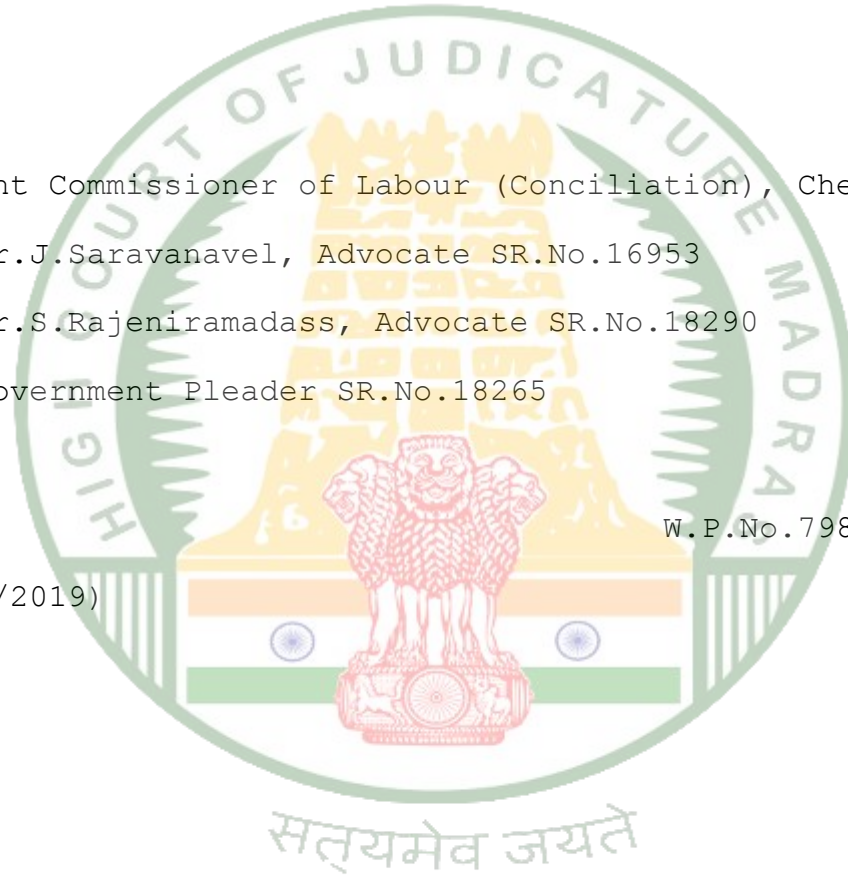
+1cc to Mr.J.Saravanel, Advocate SR.No.16953

+1cc to Mr.S.Rajeniramadass, Advocate SR.No.18290

+1cc to Government Pleader SR.No.18265

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RSI (CO)
GMY (27/03/2019)



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