

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.36507 of 2016

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Thiruvannamalai Region,
Thiruvannamalai
rep. By its General Manager ... Petitioner

vs.

1. S.Masilamani
2. The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records of the order passed by the 2nd Respondent in Approval Petition in A.P.No.226 of 2012, dated 18.11.2015 and to quash the same as illegal.

For Petitioner : Ms.S.Rajeni Ramadass
For 1st Respondent : Mr.S.T.Varadarajulu

O R D E R

Challenging the order dated 18.11.2015 passed by the 2nd Respondent in Approval Petition No.226 of 2012, the Petitioner/Management has come up with the present Writ Petition.

2. It is seen that the 1st Respondent herein was appointed as a Conductor and he was assigned duty in a Bus bearing No.TN 23 N 1553, which was plying between Kurivimalai and Kalasapakkam. On 20.07.2011, while the 1st Respondent was on duty in the said Bus route, he collected fare of Rs.2/- from a passenger and he abstained from issuing the ticket, though there were only few passengers, say, ten adults and five children in the Bus. Hence, the Petitioner/Management issued a Charge Memo dated 29.07.2011 to the 1st Respondent and the 1st Respondent submitted an undated reply to the same.

3. Since the explanation submitted by the 1st Respondent was not satisfactory, the Petitioner/Management ordered for a domestic enquiry. In the Enquiry Report dated 30.08.2011, the Enquiry Officer has stated that all the charges framed against the 1st Respondent were proved. On receipt of the Enquiry Report, the Petitioner/Management issued a Show Cause Notice dated 09.09.2011 to the 1st Respondent/employee and a reply dated 19.09.2011 was sent to the same. Thereafter, a second show cause notice dated 23.09.2011 was issued to the 1st Respondent, seeking explanation from him for provisional conclusion of dismissing him from service. The 1st Respondent sent a reply to the same. However, he was dismissed from service on 28.08.2012.

4. Since an Industrial Dispute was pending before the 2nd Respondent, the Petitioner/Management filed an Approval Petition in A.P.No.226 of 2012 and the same was rejected by an order dated 18.11.2015 on the ground that no proper salary was paid to the 1st Respondent/employee. Challenging the rejection order, the Petitioner/Management has come up with this Writ Petition.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. In terms of the decision of the Apex Court in the case of Lalla Ram vs. DCM Chemical Works reported in AIR 1978 SC 1004, issues have been framed by the 2nd Respondent/Special Deputy Commissioner of Labour, Chennai. Though the 2nd Respondent came to the conclusion that there was a shortfall in the payment of one month wages due to revision of Dearness Allowance, the same has not been taken into account.

7. Admittedly, a sum of Rs.11,870/-, which is the last drawn pay of the 1st Respondent/employee was paid to him vide Cheque No.917618 dated 16.08.2012 towards one month wages. No doubt true, it was subsequently revised after the order of dismissal of the 1st Respondent and the difference amount of Rs.305/- was paid to the 1st Respondent/employee subsequently, in the form of a cheque. As there was revision of wages in November 2012, subsequent to the dismissal of the 1st Respondent from service, no one can expect as to what would be the revision and from which date onwards, it should be given effect to. Hence, on this score, the order of the 2nd Respondent has to be interfered with. Accordingly, the order dated 18.11.2015 passed by the 2nd Respondent in Approval Petition in A.P.No.226 of 2012, is set aside.

10. It is made clear that disposal of this Writ Petition is not a bar for the 1st Respondent/employee to raise a dispute before the Labour forum, and the period during which the Approval Petition and the present Writ Petition were pending need to be excluded for the purpose of raising the dispute, as the 1st Respondent/employee shall not be deprived of approaching the Labour Court on the ground of laches.

This Writ Petition is allowed with the above direction. No costs. Consequently, connected W.M.P.No.31418 of 2016 and W.M.P.No.20419 of 2019 are closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai.

+1cc to Mr.S.Rajeni Ramadass , Advocate SR.No. 72091

+1cc to Mr.S.T.Varadarajulu , Advocate SR.No. 71006

W.P.No.36507 of 2016

A.SK(20/09/2019)

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