

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 31776 of 2018
and
W.M.P. No. 37007 of 2018

The Management,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
No.27, Railway Station New Road,
Kumbakonam - 612 001. Petitioner

-vs-

1. T.Boominathan
2. The Special Joint Commissioner of Labour,
Chennai -600 006. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 12.09.2017 passed by the Second Respondent in Approval Petition No. 246 of 2012 and quash the same, consequently, direct the Second Respondent to approve the order of the Petitioner dated 19.09.2014 dismissing the First Respondent from service.

For Petitioner : Mr. D.Venkatachalam, Standing Counsel

For Respondents: Ms. G.V.Bharathy
for Mr. L.Thiyagaiya (for R1)

Mr. D.Sathyaraj,
Special Government Pleader (for R2)

O R D E R
(through video conference)

Heard Mr. D.Venkatachalam, Learned Standing Counsel appearing for the Petitioner, Ms. G.V.Bharathy, Learned Counsel for the First Respondent and Mr. D.Sathyaraj, Learned Special Government Pleader appearing for the Second Respondent and

perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent, who was employed as driver, had been terminated from service by the Petitioner by Order No. TNSTC/D2/Ku Na2 /412/2013 dated 19.09.2014 on the charge of unauthorized absence. Since conciliation proceedings relating to an industrial dispute between the Petitioner and the Trade Union in which the Second Respondent was a member was then pending before the Second Respondent, the Petitioner had made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short), for approval of termination, but it was rejected by order dated 12.09.2017 in A.P. No. 246 of 2012 passed by the Second Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. It is evident from the impugned order that the Second Respondent has examined the application for approval made by the Petitioner with reference to the relevant aspects stipulated in the decision of the Hon'ble Supreme Court of India in Lalla Ram -vs- D.C.M. Chemical Works Ltd. [(1978) 3 SCC 1], which are as follows:-

- (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;
- (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;
- (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;
- (iv) whether the employer has paid or offered to pay wages for one month to the employee; and
- (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

4. The Second Respondent came to the conclusion that the requirement in items (i), (ii), (iv) and (v) had been satisfied and in respect of the aspects in item (iii), it was held that the records of charges against the employee on earlier occasions had not been produced during the domestic enquiry as to his past conduct before imposing the maximum punishment of dismissal from service. It was also noticed that the First Respondent had explained his inability to attend work on account of spinal cord injury and native treatment for jaundice, and that he had

conveyed his willingness to re-join duty and had also obtained medical fitness certificate in that regard. In such circumstances, relying on the decision of this Court in Tamil Nadu State Transport Corporation (Villupuram Division - 1) -vs- Joint Commissioner of Labour (Conciliation), Chennai [(2011) LLJ 644 (Mad)], it was held that the punishment of dismissal from service was too harsh and an act of victimization.

5. Learned Standing Counsel appearing for the Petitioner contends that the Second Respondent ought not to have interfered with the question of punishment as it is beyond the scope of proceedings under Section 33(2)(b) of the Act under the guise of holding that the First Respondent had been victimized. Learned Counsel for the First Respondent, while supporting the impugned order, submits that the punishment of dismissal from service is grossly disproportionate to the charge of absence from duty.

6. It has been held by the Hon'ble Supreme Court of India in John D'Souza -vs- Karnataka State Transport Corporation (Order dated 16.10.2019 in Civil Appeal No. 8042 of 2019) that while holding enquiry under Section 33(2)(b) of the Act, neither the adjudicatory powers vested in the Labour Court under Section 10 (i)(c) and (d) of the Act can be invoked nor can the proportionality of punishment be dwelled upon in the process of formation of prima facie opinion, as erroneously done in the instant case, for such a power can be exercised only under Section 11-A of the Act by the Labour Court. In that view of the matter, the impugned order dated 12.09.2017 in A.P. No. 246 of 2020 is set aside and it shall be treated that the Second Respondent has granted approval under Section 33(2)(b) of the Act to the Petitioner for the termination of the First Respondent. Though obvious, it is made clear that no view has been expressed by this Court on the correctness or otherwise of the merits of the rival contentions of the parties on the termination of the First Respondent from service and that the First Respondent is not precluded from working out his remedies to impeach the order of termination before the proper forum in the manner recognized by law (including resort to complaint under Section 33-A of the Act, if available), and that the period from the date of termination till today shall be excluded for the purpose of computation of limitation in that regard.

7. In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

vjt

To

1. The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
No.27, Railway Station New Road,
Kumbakonam - 612 001.
2. The Special Joint Commissioner of Labour,
Chennai - 600 006.

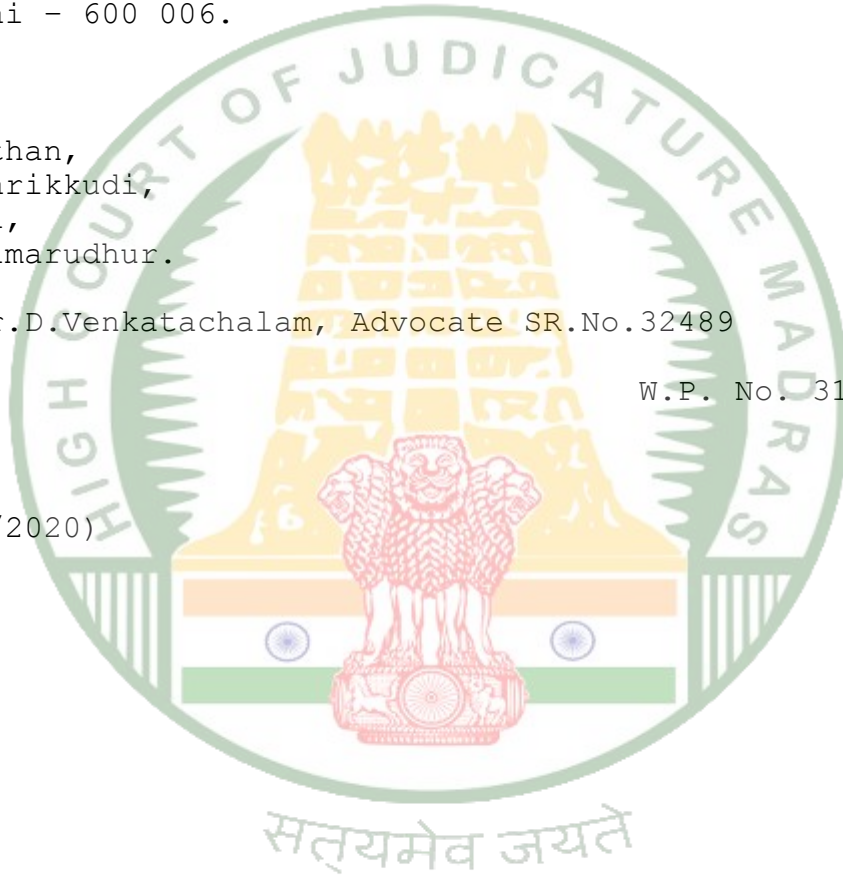
Copy to

T.Boominathan,
No. 53, Narikkudi,
Pallakkudi,
Thiruvaidaimarudhur.

+1cc to Mr.D.Venkatachalam, Advocate SR.No.32489

W.P. No. 31776 of 2018

AD(CO)
GMY(05/11/2020)



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