

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 30.07.2021**

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**

**W.P.No.10248 of 2005 and**  
**WMP.No.11584 of 2006**

Tamil Nadu State Transport Corpn  
(Villupuram Division-I) Ltd.  
3/137, Salamedu,  
Villupuram 605 602  
Rep by Managing Director.

... Petitioner

-VS-

1.The Joint Commissioner of Labour  
Conciliation,  
D.M.S. Compound  
Chennai 600006.

2. G.Shanmugam

... 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 and quash the order dated 10/12/04 passed in A.P. 341 of 2003 on the file of the first respondent, Joint Commissioner of Labour (Conciliation), Chennai.

For Petitioner : Mr.C.S.K.Sathish  
For Respondents : R1- Court.  
R2-No appearance

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## **ORDER**

The petitioner has come forward with the present writ petition challenging the order dated 10/12/2004 passed in A.P. 341 of 2003 on the file of the first respondent, Joint Commissioner of Labour (Conciliation), Chennai, by which the first respondent rejected to accord approval for the dismissal of Thiru. G.Shanmugham, Helper.

2. The facts in nutshell placed before this Court by the petitioner are as follows:

(i) The second respondent was engaged as a Helper in the Cuddalore Unit I of the petitioner Corporation. A Charge Memo was issued to the second respondent on 21.07.2001, for his authorised absence from 21.12.2000 to 20.05.2001 thereafter continuously from 21.05.2001, for which the second respondent submitted his explanation. Since the explanation was not satisfied enquiry was held, in which the second respondent had not participated and therefore he was set exparte and the enquiry officer submitted his report dated 30.04.2003, finding the second respondent guilty of the charges levelled against him. Thereafter, second show cause notice was issued to the second respondent, for which the second respondent submitted his explanation. Since, the same was also not satisfactory, the second respondent was terminated from service on 20.09.003.

(ii). Challenging the same, the second respondent filed Industrial Dispute before

the Labour Court. Pending disposal of the same, the petitioner filed an application under Section 33 (2)(b) of the Industrial Disputes Act, 1947 before the first respondent for approval of the order of dismissal and the same was taken on file in Approval Petition No.341 of 2003. Despite the fact that the petitioner made a payment of Rs.5,142/- being one month salary to the second respondent and also other payment of Rs.283/-, the first respondent vide order dated 10.12.2004 rejected the application for approval.

2. The learned counsel appearing for the petitioner submitted that the first respondent had got only limited jurisdiction under Section 33 (2)(b) of the Industrial Disputes Act, 1947 and the conclusion of the first respondent that no *prima facie* was case made out for dismissal is completely without jurisdiction. He further submitted that despite having found that the enquiry was in accordance with the principles of natural justice, the first respondent held that the charges levelled against the second respondent was not proved.

3. Despite the notice being served on the second respondent and his name printed in the cause list, there is no appearance on behalf of the second respondent.

4. Heard the learned counsel for the petitioner. Perused the materials available on

record.

5. Admittedly, the employer has not paid allowance to the employee and there is short fall as can be seen in the order of the first respondent, which is extracted hereunder:

*“The next issue to be decided is whether the Applicant has paid or offered to pay wages for one month to the Opposite party. In its application for approval the Applicant states that a sum of Rs.5412/- was paid to the opposite party at the time of his dismissal. No proof of such payment was produced before me. However after this approval application was taken up for enquiry the Applicant filed the copy of a letter addressed to the Opposite party and dated 10.06.2004 with which was enclosed a cheque for Rs.283/- alleged to be the disputed allowance in monthly salary. Exhibit A12 is the copy of the pay certificate of the Opposite party. In this the monthly wages of the Opposite party is indicated to be Rs.5695/- . In its written arguments the Applicant says that the opposite party is not eligible to get allowances such as health allowance, washing allowance and attendant benefits etc., however the Applicant had paid these subsequently to avoid disputes. The Applicant had to establish that the attendance benefits, washing allowance and the health allowance would not constitute the components of the wages of the Opposite party so that they have to be excluded in the quantum of the amount paid as one month wages at the time the Opposite party was dismissed from its services. In such circumstances these will have to be construed to be part of the component of the wages of the Opposite party. The Appellant Claims that as it had subsequently paid*

*the difference it should be deemed to have paid the exact amount as the one month wages at the time the Opposite party was dismissed from its services. To this effect the Opposite party relied on a judgment of the Honourable High court of Gujarat reported in Divisional Controller, G.S.R.T.C. Vs Conciliation Officer and others reported in 2002 (IV) LLJ p-1488. The Applicant contends that as it had subsequently paid to the Opposite Party a sum of Rs.283/- being the disputed allowance in the monthly salary, it had complied with the mandatory provisions of Section 33 (2)(b) of the Industrial Disputes Act 1947. The Applicant tacitly concedes that it had paid less than what it ought to have paid as the one month wages of the Opposite Party at the time of his dismissal. This difference is made good after the approval application was filed. The decision of the Gujarat High Court reported in 2002 IV LLJ p 1488 relied on by the Applicant will not be applicable as at the time of filing the approval application the Applicant had not made any prayer to this Authority that in case the amount paid by it as wages for one month is found to be less than what is legally due it should be permitted to pay the difference. In view of this I hold that the Applicant had also not complied with the mandatory provisions of Section 33 (2)(b) of the Industrial Disputes Act 1947 regarding the payment of one month wages to the Opposite Party at the time of his dismissal."*

6. In view of the same, this Court is of the view that when there is a short fall and that it is the allowance or wages in terms of Section 2 (rr) of the Industrial Disputes Act, the authority was right in rejecting the Approval petition. Hence, this Court is not inclined to grant relief as sought for in the Writ Petition.

7. In such view of the matter, this Writ Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

30.07.2021

Index: Yes / No

Speaking order /Non speaking order  
arr

To

The Joint Commissioner of Labour  
Conciliation,  
D.M.S. Compound  
Chennai 600006.



WEB COPY

**S.VAIDYANATHAN, J**  
arr



**W.P.No.10248 of 2006**

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