



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2021

:CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.34754 OF 2006

AND

W.P.M.P. NO.1 OF 2006

Tamil Nadu State Transport Corporation
(Villupuram) Ltd, rep. by its
General Manager, Vellore.

..... Petitioner

-vs-

1. The Joint Commissioner of Labour,
(Conciliation) DMS compound
Teynampet, Chennai-6.

2. G. Mani

..... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for records of the first Respondent's impugned order made in Approval Petition No.335 of 2003, dated 15.02.2005 and quash the same.

For Petitioner : Mr.C.S.K.Sathish

For Respondents : No appearance for R2

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 15.02.2005 passed by the 1st Respondent in Approval Petition No.335 of 2003 and to quash the same.

2. It is seen that, the 1st Respondent/Authority has rejected the Approval Petition filed by the Petitioner/Transport Corporation on the ground that the Petitioner had not paid one month wages to the Second Respondent/Employee at the time it dismissed him from his services.



3. Learned counsel for the Petitioner/Transport Corporation contended that, the 1st Respondent/Authority failed to consider the gravity of misconduct committed by the Employee, which indicates that, he issued bogus certificate at the time of appointment, for which, disciplinary action has been initiated against the Second Respondent and Domestic Enquiry was conducted and despite notice being served on the 2nd Respondent, he failed to participate in the Enquiry. He further contended that considering the gravity of misconduct committed by the Employee, after issuing second Show Cause Notice and finding that the explanation given by the 2nd Respondent/Employee was not satisfactory, the Petitioner imposed the punishment of dismissal from service to the Second Respondent.

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

5. When the Authority has come to the conclusion that, the domestic enquiry has not been conducted in accordance with the Principles of Natural Justice and that, there is procedural irregularity, then, it is the duty of the Authority to give an opportunity to the employer to establish the charges before him in the light of the decision rendered by the Apex Court in the case of John D' Souza vs. Karnataka State Road Transport Corporation, (2019) 18 SCC 47, followed by the decision of this Court in the case of Management, Tamilnadu State Transport Corporation (Villupuram) Limited vs. M.Chitti Babu, 2021 (1) LLJ 17 (Mad).

6. In similar circumstances, the Division Bench of this Court in W.A.No.2847 of 2018 dated 06.02.2019, has taken note of the Judgment of the Hon'ble Supreme Court in the case of Union of India vs M. Bhaskaran reported in 1995 Supp (4) SCC 100, wherein the Hon'ble Supreme Court has held as follows:

"..... merely because the respondent-employees have continued in service for number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer"

7. In the light of the aforesaid Judgment, the Division Bench has confirmed the order of the learned Single Judge in dismissing the Writ Petition filed by the Appellant therein.

8. Considering the aforesaid Judgments, this Court is of the view that in the case on hand, short fall of one month wages is not sufficient ground for rejecting the approval, particularly



in the case of fake certificate. Since, the authority has not decided the issues, this Court has no option except to interfere with the order passed by the First Respondent.

9. In view of the above, the order dated 13.02.2003 passed by the 1st Respondent/Authority in Approval Petition No.335 of 2003 is set aside and the matter is remanded back to the First Respondent for fresh consideration. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

arr

To:

The Joint Commissioner of Labour,
Conciliation) DMS compound
Teynampet, Chennai-6.

+1cc to Mr.C.S.K.Sathish, Advocate, S.R.No.37630

W.P.No.34754 of 2006

VGII(CO)
PM/20/10/2021