

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.23067 OF 2015
AND MP NO.1 OF 2015

The Management
State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai - 2.
Rep. by its Managing Director ... Petitioner

Versus

1.K.Maharaja
2.The Special Deputy Commissioner of Labour
DMS Compound, Chennai - 600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 2nd respondent made in A.P.No.45/2012, dated 27.07.2014 and quash the same.

For Petitioner : Mr.K.Kathiresan

For Respondent-1 : Mr.G.Mutharasu
for M/s.D.Gopal

For Respondent-2 : Ms.Thangavadhana Balakrishnan
Additional Government Pleader

सत्यमेव जयते
O R D E R

Challenging the rejection of approval petition filed by the petitioner / Management, the Writ Petition is filed.

2. The second respondent / Special Deputy Commissioner of Labour, following the rationale laid down by the Hon'ble Supreme Court in LALLA RAM VS. DCM CHEMICAL WORKS [AIR 1978 SC 1004] has found that the petitioner / Management has not complied with the principles of natural justice while conducting domestic enquiry and held that the order of termination is not bonafide and therefore, dismissed the approval petition.

3. The learned counsel for the petitioner / Management would vehemently contend that the documents, namely, the charge memo, findings of the Enquiry Officer, second show cause were promptly served on the first respondent / workman and he has also acknowledged the same, which were evidenced by Exs.P2 to P4. Therefore, when the charge memo, enquiry report and second show cause notice were received by the first respondent / workman, he cannot complain about violation of principles of natural justice. Therefore, the consequential finding that it is a case of victimization will also not hold good. In respect of other issues, it was decided in favour of the petitioner / Management. Therefore, the order passed by the second respondent / Special Deputy Commissioner of Labour, in the rejection petition, is liable to be set aside.

4. Per contra, the learned counsel appearing for the first respondent / workman would contend that no notice was served on him for the hearing of the domestic enquiry and the enquiry proceedings were also not produced before the second respondent. Therefore, principles of natural justice has already been violated. He further contended that during the relevant period, the first respondent / workman underwent surgery on his spinal cord and the medical expenses were borne out by the petitioner / Management and the payment was made directly to the Medical Institution, namely, Erode Ortho Centre, to the tune of Rs.20,000/-. While the petitioner/Management had knowledge about his treatment and reasons for his absence, and in spite of medical leave applied by him, has conducted enquiry, issued charge memo and terminated him. The action of the petitioner / Management is malafide and therefore, the finding on that aspect by the second respondent / Special Deputy Commissioner of Labour is also correct.

5. I have considered the submissions made on either side.

6. It is well settled by the ordeal requirements as laid down by the Hon'ble Supreme Court in Lalla Ram's case (cited supra) has to be complied with, in the process of terminating the employee. In this case, even though it is stated that charge memo was served by the petitioner / Management and it was acknowledged by the first respondent / employee, I do not find any documentary evidence to show that he was served with the enquiry notice for the enquiry proceedings. Admittedly, the first respondent/ employee was undergoing treatment for Spinal Cord surgery and it was proved by filing Ex.R1 - Medical certificates. It is not the case of the petitioner / Management that the period for which the charge memo was issued and the period of treatment are different and it has no connection. But it is clear that the petitioner / Management was having

knowledge about the medical treatment and they have reimbursed the medical expenses. In that event, the issuance of charge memo, knowing well that it is impossible for the worker to come and attend the enquiry is smacked with malafide. Therefore, I do not find any irregularity or perversity in the order passed by the second respondent / Special Deputy Commissioner of Labour.

7. In fine, the Writ Petition does not merit any consideration and accordingly, stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

TK
To

The Special Deputy Commissioner of Labour
DMS Compound,
Chennai - 600 006.

+1cc to Mr.D.Gopal , Advocate SR.No. 14097

+1cc to Mr.M.Karthireshan , Advocate SR.No. 14137

+1 cc to Government Pleader Sr.No. 14585

WP NO.23067 OF 2015

A.SK(12.03.2021)

सत्यमेव जयते

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