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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

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THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.NO. 7958 OF 2019
AND WMP.NO.8563 OF 2019

The Management,
Tamil Nadu State Transport
Corporation (Salem) Limited
12, Ramakrishna Road, Salem

..Petitioner

Vs

1. V.Raja
2. The Special Deputy Commissioner of Labour,
DMS Building, Chennai.

..Respondents

Prayer:

Writ Petition is filed under Article 226 of Constitution of India for writ of Mandamus, call for the records pertaining to the order dated 28.10.2016 passed by the 2nd respondent in Approval Petition No.220 of 2013 and quash the same, consequently direct the 2nd respondent to approve the order of the petitioner dated 09.07.2013 dismissing the 1st respondent from service.

For Petitioner : Mr. D.Raghu
For Respondent No.1 : M/s. S.Girija - R1
Mr.S.Arumugham ,
Govt. Counsel - R2

O R D E R

The Hon'ble Supreme Court in Lalla Ram Vs. DCM Chemical Works Ltd., and another reported in 1978 (3) SCC 1 as well as in John 'D' Souza Vs. Karnataka State Road Transport Corporation, reported in 2019 (18) SCC 47, had laid down the principles governing the powers of the authority while dealing with an application under Section 33 (2) (b) of the Industrial Disputes Act, 1947. Among such powers, it has been held that



the authority requires to consider as to whether or not prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry and whether such dismissal was not by way of victimisation.

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2. In the instant case, based on the materials available before him, the Authority had come to the conclusion that there were sufficient materials to establish the reason for the workman's absence and therefore had come to the conclusion that the punishment was by way of victimisation. I do not find any infirmity with such findings.

3. It is stated that the 1st respondent herein/workman was on unauthorised leave from 26.12.2012 to 07.01.2013 i.e for a period of 12 days. On 08.01.2013 the management had permitted him to rejoin duty and thereafter the charges were framed and enquiry conducted. The 1st respondent had also marked three documents viz., Exhibits. R1 to R3 substantiating the reasons for his absence. The authority had placed reliance on these documents for coming to the conclusion that the punishment was by way of victimisation. When the law permits the authority to come to a prima-facie opinion based on the materials available, there is no infirmity in the order of rejection.

4. At this juncture, the learned counsel for the respondent/petitioner-Corporation would submit that the petitioner herein is an habitual absentee and he has been punished on 58 previous occasions. The learned counsel for the 1st respondent would submit that all these absence was owing to his medical ailment of 'Asthma' and that he has been repeatedly requesting the management for an alternate job.

5. The 1st respondent herein had reached his age of superannuation on 31.07.2017. Though this Court finds that there is no infirmity in the impugned order of rejection of the Approval Petition, the previous 58 adverse antecedents in his service records cannot be ignored. In this background, if the back wages during his non employment period is dispensed with, the ends of justice would be secured.

6. In the light of the above discussion, the impugned order dated 28.10.2016 is sustained. Consequently, the order of dismissal dated 09.07.2013, dismissing the 1st respondent herein from service is set aside. Consequently, the 1st respondent herein is deemed to have been reinstated into service and retired on 31.07.2017 and in view of the same, the 1st respondent herein shall be entitled for all the retirement benefits including pensionary benefits, together with continuity of service. However, the 1st respondent shall not be entitled to the back wages during his period of non-employment with the



petitioner management from the date of retirement till superannuation. The petitioner herein shall endeavour to disburse all the retirement benefits as expeditiously as possible, at least within a period of eight weeks from the date of receipt of a copy of this order.

7. With the above discussions and directions, the writ petition stands closed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.D.Raghu, Advocate, S.R.No.54004
+1cc to M/S.S.Girija, Advocate, S.R.No.53869
+1cc to the Government Pleader, S.R.No.54660

W.P.No. 7958 of 2019
and
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PVS (CO)
PM/12/11/2021