



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.14192 of 2021
and
W.M.P.No.15068 of 2021

The Management
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited, Pudukottai Region
51/1, Pillai Thanner Panthal
Thirumayam Road, Pudukottai 622 001 ...Petitioner

Vs.

1.S.Veeramanikandan
S/o.Subbaiah
2.The Special Joint Commissioner of Labour
DMS Campus, Anna Salai, Chennai ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified Mandamus, call for the records pertaining to the order dated 05.03.2021 passed by the 2nd respondent in Approval Petition No.96 of 2019 and quash the same, consequently direct the 2nd respondent to approve the order of the petitioner dated 29.06.2019 dismissing the 1st respondent from service.

For Petitioner : Mr.D.Venkatachalam
For Respondents : Mr.S.Santhosh Kumar for R1
Mr.L.S.M.Hasan Fizal, G.A for R2

O R D E R

This writ petition has been filed challenging the order dated 05.03.2021 passed by the 2nd respondent in Approval Petition No.96 of 2019 and for a consequential direction to the 2nd Respondent to approve the order of the petitioner dated 29.06.2019, dismissing the 1st respondent from service.

2. Learned counsel for the Petitioner/Transport Corporation contended that, when the domestic enquiry is held to be fair and proper and that, the charges against the employee are



established, the question of victimization does not arise, as victimization is anti-thesis. He went on to contend that, the decision taken by the 2nd Respondent/Authority is beyond his scope and it is not in consonance with the guidelines framed by the Apex Court in the decision rendered in the case of Lalla Ram vs. Management of D.C.M. Chemical Works Ltd. reported in AIR 1978 SC 1004.

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

4. A reading of Section 33(2)(b) of the Industrial Disputes Act, 1947 read with Rule 64(2) of the Industrial Disputes Rules, 1958, makes it clear that, an Application seeking approval of dismissal of the employee needs to be served on the employee and simultaneously, it has to be filed before the Authority. Otherwise, the Approval Petition cannot be entertained.

5. It is seen that, the Authority has come to the conclusion that, there is prima facie evidence of victimization of the employee. Once the domestic enquiry is held to be fair and proper, the Authority cannot hold that, the punishment imposed on the employee is harsh and disproportionate to the charges.

6. As regards the issue of victimization, it is worth referring to the decision rendered by the Apex Court in the case of Bharat Iron Works vs. Bhagubhai Balubhai Patel, reported in (1976) 1 SCC 518, relevant paragraph of which, reads thus:

"12. Again victimization must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the necessary proof of a valid charge against him. The question to be asked is: Is the reason for the punishment attributable to a gross misconduct about which there is no doubt or to his particular trade union activity which is frowned upon by the employer? To take an example, suppose there is a tense atmosphere prevailing in a Company because of a strike consequent upon raising of certain demands by the Union, each party calling the other highly unreasonable or even provocative, the Tribunal will not readily accept a plea of victimization as answer to a gross misconduct even when an employee, be he an active office-bearer of the Union, commits assault, let us say, upon the Manager, and there is reliable legal evidence to that



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effect. In such a case the employee, found guilty, cannot be equated with a victim or a scapegoat and the plea of victimization as a defence will fall flat. This is why once, in the opinion of the Tribunal a gross misconduct is established, as required, on legal evidence, either in a fairly conducted domestic enquiry or before the Tribunal on merits, the plea of victimization will not carry the case of the employee any further. A proved misconduct is antithesis of victimization as understood in industrial relations. This is not to say that, the Tribunal has no jurisdiction to interfere with an order of dismissal on proof of victimization."

7. In the case on hand, the charge of 'unauthorized absence' against the employee is established and the Authority has clearly held that, the domestic enquiry has been conducted in a fair and proper manner. In such case, the Authority cannot go beyond his scope and hold that, the punishment imposed on the employee is disproportionate to the charges framed against him.

8. In view of the above, the order dated 05.03.2021 passed by the Authority in Approval Petition No.96 of 2019 is set aside. If the employee is aggrieved, he is permitted to raise an industrial dispute under Section 2(A) of the Industrial Disputes Act, 1947.

9. It is made clear that, employee is entitled to wages from the date of the rejection of the Approval Petition passed by the Authority till the date of the order of this Court. It is also made clear that, the period of limitation prescribed under Section 2(A) of the Act will commence on and from the date of approval of the action of the Management, in confirming the order of dismissal.

No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Special Joint Commissioner of Labour
DMS Campus,
Anna Salai, Chennai

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+1 CC to Mr.D.Venkatachalam, Advocate, Sr.No. 37094.
+1 CC to Mr.S.Santhosh Kumar, Advocate, Sr.No. 37441.

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PA (CO)
LS (20/10/2021)