



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.14193 of 2021
and
W.M.P.No.15070 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.M.Senthilkumar
S/o.Manickam
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.103 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.103 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. It is seen that, the 2nd Respondent/Authority has rejected the Petitioner's Approval Petition on the ground that, enquiry has not been conducted properly and that, the punishment imposed on the 1st Respondent/employee is disproportionate to the charges framed against him and that, there is victimization.

3. 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.

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

5. 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.

6. 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.

7. 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



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

WEB COPY

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

kas

To

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

+1 CC to Mr.D.Venkatachalam, Advocate, Sr.No. 37095.
+1 CC to Mr.S.Santhosh Kumar, Advocate, Sr.No. 37440.

W.P.No.14193 of 2021
and
W.M.P.No.15070 of 2021

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