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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.2289 OF 2021
AND
C.M.P.NO.14530 OF 2021

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

vs

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

Prayer: Writ Appeal filed under clause 15 of the Letters Patent to allow the Writ Appeal by setting aside the final order passed in Writ Petition No.23067 of 2015 dated 05.03.2021.

WP.No.23067 of 2015:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari calling for the records of the 2nd Respondent made in A.P.No.45 of 2012 dated 27.07.2014 consequently quash the same.

For Appellee	:	Mr.K.Kathiresan
For Respondents	:	Mr.M.T.Mohan for R1 for Mr.G.Mutharasu

JUDGMENT
(Delivered by Krishnan Ramasamy, J.,)

This Writ Appeal has been directed against the order dated 05.03.2021 passed by a learned single Judge of this Court in WP No.23067 of 2015 dismissing the writ petition filed by the Appellant/Management, seeking to quash the order dated



27.07.2014 of the second respondent/Special Deputy Commissioner of Labour, rejecting the approval petition filed by the Appellant/Management under section 33(2)(B) of Industrial Disputes Act 1947.

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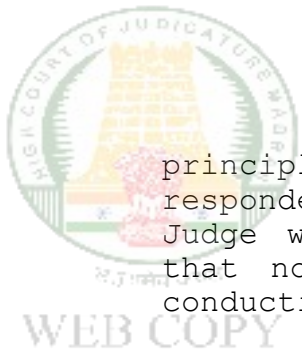
2. The brief facts, which are necessary for disposal of the present Writ Appeal, are stated as under.

2.1. The 1st respondent herein was working as a Driver in Salem Depot. According to the Appellant/Management, the 1st respondent had absented for duty from 05.03.2011 without any prior permission or leave letter. For the said misconduct, a Charge memo dated 14.03.2011 was issued, calling for his explanation. But there was no reply from the 1st respondent and consequently, a domestic enquiry was conducted wherein also, the 1st respondent did not attend the enquiry, which prompted the Enquiry Officer to conduct the enquiry ex parte and submitted his report.

2.2. Thereafter, a copy of the enquiry report was sent to the 1st respondent on 22.12.2011 calling for his remarks, which was not acknowledged by him. Later, again a second show cause notice dated 28.11.2011 was sent to the 1st respondent calling for his explanation for the provisional conclusion arrived by the Appellant/Management to dismiss him from service. Even for the second show cause notice, there was no reply from the 1st respondent. In such circumstances, the Appellant/Management was constrained to pass dismissal order dated 12.09.2011 along with one month pay of Rs.15,626/- and consequently, the Appellant/Management filed a petition under section 33(2)(B) of the Industrial Disputes Act, 1947 in AP No.45 of 2012 before the 2nd respondent, seeking for approval of its action in dismissing the 1st respondent from service. However, by order dated 27.07.2014, the 2nd respondent has rejected the approval petition filed by the Appellant/Management. Challenging the order of the 2nd respondent, the Appellant/Management has filed the Writ Petition before the Writ Court.

3. On consideration of the facts and circumstances and the arguments advanced by the respective learned counsel for the parties, a learned single judge of this Court, following the dictum of the Hon'ble Supreme Court in "Lalla Ram versus DCM Chemical Works" [AIR 1978 SC 1004], dismissed the Writ Petition. Aggrieved by the order of the learned single Judge, the Appellant/Management has preferred the present Writ Appeal.

4. The learned counsel appearing for the Appellant/Management would submit that they have duly served the Charge memo as well as the enquiry report to the 1st respondent. Therefore, it is contented that there is no violation of



principles of natural justice in providing opportunity to 1st respondent in the domestic enquiry. However, the learned single Judge without considering these aspects, came to a conclusion that no opportunity was provided to the 1st respondent while conducting the domestic enquiry.

5. Per contra, the learned counsel appearing for the 1st respondent would submit that there was no notice served on him in regard to domestic enquiry and without conducting domestic enquiry in accordance with law and procedure contemplated under the Rules, the enquiry report was submitted in violation of principles of natural justice and on consideration of these aspects, the Writ Court has rightly dismissed the Writ Petition filed by the writ petitioner/Appellant herein, which does not warrant interference by this Court. Hence, the learned counsel sought for dismissal of the Writ Appeal.

6. Heard the learned counsel appearing for the Appellant/Management and the learned counsel appearing for the 1st respondent and perused the entire materials available on record.

7. In the present case, it appears that a Charge memo, dated 14.03.2011 was issued against the first respondent for his unauthorised absence by the Appellant/Management when he was in service. During the relevant period of his employment, the 1st respondent sustained injuries and he underwent a surgery on his spinal cord and the medical expenses were also borne out by the Appellant/Management by directly making payment to the Medical Institution, namely, Erode Ortho Centre to the tune of Rs.20,000/-. Therefore, the Appellant/Management was well aware of the fact that the 1st respondent had sustained injury on his spinal cord and he was hospitalised and taking treatment and in such circumstances, he was unable to report to duty. Therefore, when once the Appellant/Management was aware of the predicament of the 1st respondent, it is appropriate for the Appellant/Management to take care of its employee by providing any other alternative work which is suitable for him. But from the record, it shows that the Appellant/Management has not provided any alternative employment to the 1st respondent. Though, the Appellant/Management has categorically averred that they have served the charge memo and enquiry report and obtained acknowledgement from the 1st respondent, but they have not filed any proof of service of enquiry notice with regard to conducting the enquiry. Therefore, the learned single Judge has rightly considered this aspect and held that the principles of natural justice have been violated in conducting the enquiry. It would be appropriate to extract the relevant portion of the order of the learned single Judge as under:

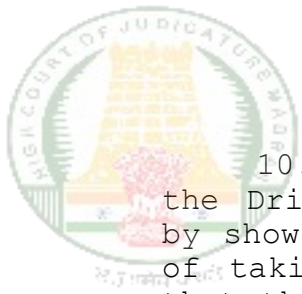


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"6. It is well settled by the ordeal requirements as laid down by the Hon'ble Supreme Court in Lalla Ram's case (cited supra) has to be complied with, in the process of terminating the employee. In this case, even though it is stated that charge memo was served by the petitioner / Management and it was acknowledged by the 1st 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 1st 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.

8. It is apparent from a perusal of the record that no notice was served with regard to the domestic enquiry to the 1st respondent which clearly amounts to violation of principles of natural justice. Even assuming that there was an unauthorised absence, the same would amount to only a misconduct and it cannot be termed as a grave lapse on the part of the 1st respondent so as to an inflict order of dismissal from service against the 1st respondent.

9. In fact, the job of drivers on road vehicles is highly risky at every moment and there is no assurance for them that they return to home safely after their duty since nowadays, number of road accidents are being reported. In road accidents, they get sustained injuries and many of them even died. The life led by a driver is simple yet dangerous and there is no certainty in his job, but he is honest in performing his duty.



10. Therefore, taking note of the importance of the job of the Drivers, the Appellant/Management should take care of them by showing indulgence in matter of lapses on their part instead of taking rigid action against them. It is pertinent to note that the 1st respondent had put in more than 25 years of service and he also sustained grievous injury on his spinal cord during his employment as driver and the medical expenses were also borne out by the Appellant/Management. But for the unauthorized absence which amounts to a misconduct, it is very unfortunate that the Appellant/Management had taken initiative and ultimately resorted to pass order of dismissal from service even without following principles of natural justice in the matter of conducting the enquiry and sought for approval of its action, which was rejected by the 2nd respondent and rightly confirmed by the learned single Judge. Therefore, we do not find any infirmity or irregularity in the order passed by the learned single Judge.

11. In the result, the writ appeal fails and the same is dismissed. No costs. Consequently, connected C.M.P. Is closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

suk/jd

To

1. The Special Deputy Commissioner of Labour,
DMS Compound, Chennai 600 006.
2. The Managing Director,
The Management,
State Express Transport Corporation Ltd.
Pallavan Salai, Chennai 2.

+1cc to Mr.K.Kathiresan, Advocate, S.R.No.46834
+1cc to Mr.G.Mutharasu, Advocate, S.R.No.47276

W.A.No.2289 of 2021

PM(CO)
CS/13/10/2021