

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26151 of 2017

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Represented by its General Manager,
Trichy Region,
Trichirapalli - 620 001.

... Petitioner

vs.

1. The Special Deputy Commissioner of Labour,
DMS Campus,
Anna Salai, Chennai.

2. R.Sanjeevi

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 13.03.2017 passed by the 1st Respondent in Approval Petition No.26 of 2013 and quash the same and consequently direct the 1st Respondent to approve the order of the Petitioner, dated 11.01.2013, dismissing the 2nd Respondent from service.

For Petitioner : Mr.D.Venkatachalam

For 2nd Respondent : Mr.V.Manisekaran

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 13.03.2017 passed by the 1st Respondent in Approval Petition No.26 of 2013 and for a consequential direction to the 1st Respondent to approve the order dated 11.01.2013 passed by them, dismissing the 2nd Respondent from service.

2. It is seen that, the 1st Respondent/Authority has rejected the Approval Petition filed by the Petitioner/Transport Corporation on the ground that, the punishment imposed on the

employee is disproportionate to the charges framed against him.

3. Learned counsel for the Petitioner/Transport Corporation contended that, the 1st Respondent/Authority failed to note that, the 2nd Respondent/employee absented himself from duty without prior permission.

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. In the present case on hand, the Authority has come to the conclusion that, there is prima facie evidence of victimization of the 2nd Respondent/employee. In the domestic enquiry, it is not necessary that, the Manager of the Management, should be examined. Circumstantial evidence is suffice to establish the charges against the employee. Hence, the finding of the Authority that there is no evidence against the employee, cannot be accepted. Once there is sufficient evidence, the question of victimization does not arise, as proved misconduct is anti-thesis of victimization.

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 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 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."

8. However, the 1st Respondent/Authority is right in rejecting the Approval Petition filed by the Petitioner/Transport Corporation on the ground that, Approval Petition has not been filed simultaneously as contemplated under the Industrial Disputes Act, 1947 and Industrial Disputes Rules, 1958 and that, there was a delay of seven days in presenting the Approval Petition. Hence, this Court does not find any reason to interfere with the order dated 13.03.2017 passed by the 1st Respondent/Authority in dismissing the Petitioner's Approval Petition No.26 of 2013.

In fine, the Writ Petition stands dismissed. No costs. Consequently, connected W.M.P.No.27793 of 2017 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Special Deputy Commissioner of Labour,
DMS Campus, Anna Salai, Chennai.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.37118
+1cc to Mr.V.Manisekaran, Advocate, S.R.No.37173

W.P.No.26151 of 2017

BR(CO)
CT(17/09/2021)