



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26428 of 2017

AND

W.M.P. No.28122 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.K.Durairaj

... 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 03.03.2017 passed by the 1st Respondent in Approval Petition No.32 of 2013 and quash the same, consequently direct the 1st Respondent to approve the order of the Petitioner, dated 04.03.2013, 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 03.03.2017 passed by the 1st Respondent in Approval Petition No.32 of 2013 and for a consequential direction to the 1st Respondent to approve the order dated 04.03.2013 passed by them, dismissing the 2nd Respondent/employee 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, non-examination of the Branch



Traffic Assistant of the Transport Corporation in support of the charge alleged against the 2nd Respondent/employee, is fatal to the case.

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. He went on to contend that, the decision taken by the 1st 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. Learned counsel appearing for the 2nd Respondent/employee contended that, once the Authority holds that, non-examination of material witness vitiates the proceedings, the normal relief of rejection of Approval Petition has to be ordered, and the Authority has rightly rejected the Approval Petition.

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

6. The only reason given by the 1st Respondent/Authority for rejecting the Petitioner's Approval Petition is that, the Branch Traffic Assistant of the Transport Corporation has not been examined to prove the charge against the employee. This Court is not willing to accept the same, as even hearsay evidence is admissible. The Authority has erred in rejecting the Petitioner's Approval Petition on this ground and hence, the order dated 03.03.2017 passed by the 1st Respondent/Authority in Approval Petition No.32 of 2013 is set aside, moreso in the light of the decision of the Apex Court in the case of John D' Souza vs. Karnataka State Road Transport Corporation, reported in (2019) 18 SCC 47, followed by the decision of this Court in the case of Management, Tamil Nadu State Transport Corporation (Villupuram) Limited, Kancheepuram Region, reported in 2021-I-LLJ-17 (Mad).

7. If the 2nd Respondent/employee is aggrieved, he can raise an industrial dispute under Section 2(A) of the Industrial Disputes Act, 1947. It is 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.

8. Once the Authority confirms the order passed by the Management, the order of dismissal of the employee will get merged with the order of the Authority in the Approval Petition, and the period of limitation begins from the date of grant of



approval and not prior to that date, even though the dismissal order is held to be valid. Hence, the period of limitation will run only from the date of the order in the Approval Petition, when the dismissal order is confirmed by the Tribunal/Authority/Board. Similarly, the period during which the Writ Petition is pending shall also be excluded for the purpose of limitation.

The Writ Petition is allowed on the above terms. No costs. Consequently, connected W.M.P.No.28122 of 2017 is closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

(aeb)

To:

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

+1cc to M/s.D.Venkatachalam, Advocate SR.No.37104

+1cc to M/s.V.Manisekaran, Advocate SR.No.37172

W.P.No.26428 of 2017

KSM(CO)
RVM(21/09/2021)