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W.P.No.39072 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

**W.P.No.39072 of 2005
and W.P.M.P.No.41846 of 2005**

Tamil Nadu State Transport Corporation
(Villupuram) Ltd., Vellore Region
Vellore
Rep. by its Managing Director

...Petitioner

Versus

1.The Joint Commissioner of Labour (Conciliation),
Chennai.

2.A.Kumar

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the first respondent in Approval Petition No.82/2004 dated 01.09.2004.

For Petitioner	:	Mr.G.Saravana Kumar
For Respondent – 1	:	No Appearance
Respondent – 2	:	Mr.V.Porkodi for Mr.V.Ajay Khose



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ORDER

The relief sought by the petitioner in this writ petition is to call for the records of the first respondent in Approval Petition No.82 of 2004 dated 01.09.2004.

2. The case of the petitioner is that the second respondent was working as a conductor in the petitioner corporation. While so, on 25.07.2003, when the second respondent was on duty in Bus No.TN-23-N-1177 in Route No.464/A, the said bus was checked by Checking Inspectors at Vettuvanam. During such check, it was found that a group of six passengers were travelled from Ambur to Vettuvanam, without tickets. Upon enquiry, those passengers had informed that as soon as they boarded the bus at Ambur, they gave Rs.50/- to the second respondent and asked for six tickets to Vettuvanam but the second respondent did not give them tickets. Further, it was found that the second respondent had issued nine tickets of Rs.6.50/- each to a group traveling from Ambur Sugar Mills to Vettuvanam and nine tickets of Rs.8/- each to another group travelling from Ambur to Vettuvanam without punching the same and without making entry in the invoice. Similarly, the second



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respondent had also issued three more tickets of Rs.10/- each without making any entry in the invoice.

3. Due to the above misconduct of the second respondent, the petitioner corporation has issued him a Charge Memo dated 31.07.2003, for which, he gave explanation on 07.08.2003. But the petitioner corporation was not satisfied with his explanation and therefore, it conducted a domestic enquiry. The second respondent participated in the said domestic enquiry. In the Enquiry Report, the Enquiry Officer has held that the charges which were framed against the second respondent had been proved. On the basis of the findings of Enquiry Officer as well as the past service records of the second respondent, a Show Cause Notice dated 29.11.2003 was issued to him. In response to the said Show Cause Notice, the second respondent gave his explanation on 15.12.2003. Since his explanation was not satisfactory, he was dismissed from service vide order dated 12.02.2004. Subsequently, the petitioner corporation has filed an Approval Petition No.82 of 2004 before the first respondent Court, seeking approval for the dismissal of the second respondent. But the said Approval Petition was rejected by the first respondent Court vide order dated 01.09.2004. Therefore, left with no other



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alternative, the petitioner corporation has filed the present writ petition before this

Court for the relief stated *supra*.

4. Heard the learned counsel on both sides and perused the materials available on record.

5. As far as this case is concerned, the allegation against the second respondent who was working as a conductor in the petitioner corporation is that he has indulged in misconducts like even after collecting money from the passengers, not issuing them tickets and also, without making entry in the invoice, issuing non-punched tickets to the passengers. A domestic enquiry was conducted in this regard, in which, the charges framed against the second respondent were also proved, as a result of which, he was dismissed from service on 12.02.2004. Thereafter, the petitioner corporation has filed an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'ID Act') before the first respondent Court, seeking the approval for dismissal of second respondent.



WEB COPY 6. It is pertinent to extract Section 33(2)(b) of the I.D.Act hereunder:

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings – (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman]

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

7. As per the above provision, it is a mandatory condition that while dismissing a workman from service, his employer should pay his wages for one month. Before the first respondent Court, a photocopy of the second respondent's pay slip for the month of February 2004 was marked as Exhibit A4, in which, the rate of basic pay payable to him is indicated as Rs.4,215/- and the rate of dearness allowance payable to him is indicated as Rs.1,501.20/- respectively. On the basis of



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the said exhibit, the first respondent Court held that at the time of dismissal of second respondent from service, the dearness allowance payable to him is Rs.1,501.20/- and the one month's wages payable to him is Rs.6,733.95/- and thereby, petitioner corporation has violated the aforesaid mandatory condition which was stipulated under Section 33(2)(b) of the ID Act. Therefore, the first respondent Court has rightly rejected the Approval Petition of the petitioner corporation.

8. It is to be noted that when this Court dealt with an identical issue in the case of ***The Management, State Express Transport Corporation (Tamil Nadu) Ltd., vs. The Joint Commissioner of Labour (Conciliation), Chennai and Anr.*** reported in ***2012 SCC Online Mad 1946***, has held as follows:

“10. On the question of payment of wages, subsequent to the Supreme Court, several High Courts have taken a definite stand on the question of shortfall in the payment of one month pay. It is necessary to refer to one or two cases. The High Court of Karnataka vide its judgment in *Karnataka Agro Industries Corporation Ltd., vs. Industrial Tribunal and another* reported in 1984 (64) FJR 179 has held that in the offering of one month pay even if the increment accrued to the workman was not included, then it would not amount to the compliance under Section 33(2)(b) of the I.D. Act.



11. *The same view was taken by this Court in Palaniswami vs. Indian Hume Pipe Co., reported in 1965 (2) LLJ 541 that if the calculation of one month pay is not in accordance with law, the approval need not be granted by the authorities.”*

9. Similarly, in the case of ***Tamil Nadu State Transport Corporation (Villupuram Division – I) Ltd., vs. The Joint Commissioner of Labour (Conciliation), DMS Compound, Chennai and Anr.*** reported in (2011) 1 LLJ 646 ***Mad***, this Court has observed as hereunder:

“11. Thus, applying the two decisions cited by the learned counsel for the second respondent/workman to the facts of this case and having regard to the factual finding given by the first respondent, namely less payment of one month wages to the second respondent, I am of the view that the findings given by the first respondent refusing to give approval is legally valid as the conditions stipulated in Section 33(2)(b) are not fulfilled and no case is made out to interfere with the said findings.”

10. Considering the facts and circumstances of the case and following the aforesaid decisions of this Court, I am of the view that the relief sought by the petitioner cannot be granted since the case of the petitioner deserves no merit of consideration. Therefore, this writ petition is liable to be dismissed.



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WEB COP11. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking Order (or) Non Speaking Order



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The Joint Commissioner of Labour (Conciliation),
Chennai.



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J.SATHYA NARAYANA PRASAD, J.

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