



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4317 of 2015

The Management,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Bharathipuram,
Salem Main Road,
Dharmapuri - 636 705,
Rep.by its General Manager.

...Petitioner

Vs.

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

2.C.Samuel

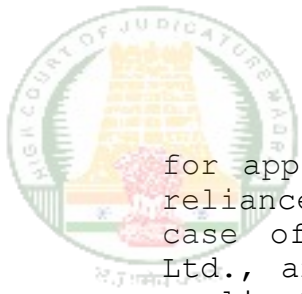
...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for records in proceeding pursuant to the order passed in Approval Petition A.P.No.487/2012 dated 05.12.2013, on the file of the 1st respondent, and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner	:	Mr.M.Arun for Mr.A.Sundaravadhanam
For R1	:	Mr.P.Ganesan, Additional Government Pleader
For R2	:	M/s.Rama Priyagopalakrishnan

ORDER

On a set of charges that the petitioner herein had accepted ticket fare from three passengers and had failed to issue tickets to them, a domestic enquiry was conducted and the charges were held to be proved. After opportunity to the 2nd respondent/workman, the order of dismissal came to be passed on 09.08.2012. In continuance of the dismissal order, the petitioner Corporation had filed an application under Section 33(2)(b) of the Industrial Disputes Act 1947, seeking



for approval of the dismissal order. The authority by placing reliance on the decision of the Hon'ble Supreme Court in the case of Lalla Ram vs. Management of D.C.M. Chemical Works Ltd., and others, reported in AIR(1978) SC 1004, rejected the application on the ground that there was no prima-facie case before the Enquiry Officer and that the application under Section 33(2)(b) of the Act, was belatedly made after 7 days, through the impugned order dated 05.12.2013. The said order is under challenge in the present writ petition.

2. On the reasoning adduced by the authority that there was no prima-facie case before the Enquiry Officer, reliance was placed on the fact that the passengers to whom the tickets were not issued, were not examined and thereby, the authority had come to the conclusion that there was no prima-facie case before the Enquiry Officer. Admittedly, there were two other witnesses, who were examined in the Enquiry, namely the ticket checker, who had found that three tickets were not issued to the passengers and the driver of the bus. Though the driver's evidence may not be of much relevance to the levelled charges, the tickets checker's evidence, who had initially found that there were 33 passengers alone in the bus at the time of checking, as against the 35 passengers found in the bus trip sheet and who had also found that there was excess cash in the 2nd respondent's cash bag, would be a relevant witness. When the authority had not considered the evidence of the ticket checker, it cannot be said that there was no prima-facie case before the Enquiry Officer.

3. However, the belated filing of the application seeking for approval under Section 33(2)(b) of the Act, cannot be substantiated by the petitioner Corporation. It is a well settled proposition that when an Approval Petition is made under Section 33(2)(b) of the Act, pursuant to an order of dismissal or termination, the same requires to be filed simultaneously along with the order of dismissal. Among such decisions, in the decision of the Hon'ble Supreme Court in the case of Lalla Ram (Supra), it was held that the jurisdiction of the Industrial Tribunal in an enquiry under Section 33(2)(b) would be confined to five aspects, in which one of the aspect would be, as to whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main Industrial Dispute is pending, for approval of the action taken by him. This Court in several decisions have held that an application made after one or two days, was held to be fatal to the action initiated by the employer.

4. In the instant case, the dismissal order has been marked as Ex.P-8 in the domestic enquiry and admittedly, the application under Section 33(2)(b) of the Act, was filed on 16.08.2012, whereby the delay was about 7 days. Such a delay is opposed to the proposition laid by the Hon'ble Supreme Court, in case of Lalla Ram (Supra) and thus, the order of the



authority rejecting the Approval Petition, can be sustained on this ground.

5. In the result, there are no merits in the present Writ Petition and accordingly, this Writ Petition stands dismissed. Consequently, the petitioner Corporation shall pass appropriate orders, treating the 2nd respondent/workman, as being in service without reference to the dismissal order and thereby, extend continuity of service, together with all service and other monetary benefits, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Pns

To

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

+1cc to Mr.A.Sundaravadhanan, Advocate SR. No. 24019
+2ccs to M/s.Ramapriya Gopalakrishnan, Advocate SR. No.23738
+1cc to Government Pleader SR. No. 23849

W.P.No.4317 of 2015

SSV (CO)
PR (25/04/2022)