



WEB COPY



W.P.No.30501 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.30501 of 2014

The Management,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Dharmapuri Division,
Salem Salai, Bharathipuram,
Rep. by the General Manager,
Dharmapuri.

...Petitioner

Vs

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

2.D.Noel Bennet

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for records of the 1st respondent order passed in Approval Petition No.488/2012 dated 12.12.2013 and quash the same as illegal and against the provisions of Industrial Disputes Act, 1947.



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For Petitioner : Mr.R.Babu

For R1 : Mr.G.Velu,
Additional Government Pleader

For R2 : Mr.V.R.Annagandhi

ORDER

Heard Mr.R.Babu, learned counsel for the petitioner, Mr.G.Velu, learned Additional Government Pleader for the first respondent and Mr.V.R.Annagandhi, learned counsel for the second respondent.

2. For the charge of unauthorised absence from 06.05.2011, the second respondent herein, who was engaged as a Driver under the petitioner Transport Corporation, was subjected to departmental enquiry. Based on the proven charges, through the enquiry report in Ex.P.5, the second respondent was dismissed from service on 11.09.2012. On 20.09.2012, the Corporation had filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947, seeking for approval of the action taken. The authority, through the impugned order passed in A.P.No.488 of 2012, dated 12.12.2013, had rejected the approval petition, on the ground that the enquiry was not concluded based on the satisfactory evidences produced during the course of



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enquiry and hence, there was no prima facie case for awarding the punishment of dismissal from service.

3. A perusal of the impugned order of the authority reveals that the workman had produced the documents relating to his leave application, medical certificate for the period of absence, acknowledgment for having submitted the medical certificate. The Enquiry Officer had not addressed these material evidences produced before him, but however, had held the charges to be proved. It is on this basis, the authority had opined that there was no prima facie case for the Enquiry Officer to have held the charges to be proved. I do not find any infirmity in such findings.

4. When the charge itself is one for unauthorised absence and the concerned workman had produced the documents relating to his leave application and medical certificate with acknowledgment of having served it on the management, there is a duty cast on the Enquiry Officer to have addressed these documents, which are relevant to the charges.



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5. The Hon'ble Supreme Court, in the case of ***Lalla Ram Vs. D.C.M.***

Chemical Works reported in A.I.R. 1978 (S.C.) 1004, had held when there is no prima facie case before the Enquiry Officer before holding the charges to be proved, the application under Section 33(2)(b) of the Industrial Disputes Act can be rejected. Thus, the authority had rightly come to the conclusion for rejecting the approval petition.

6. Accordingly, there are merits in the present Writ Petition. Hence, the Writ Petition stands dismissed. No costs.

7. In view of the dismissal of the Writ Petition, the second respondent herein is deemed to have been in service and retired on the date of his superannuation, without reference to the order of dismissal dated 11.09.2012. Consequently, the petitioner Corporation shall pass appropriate orders, disbursing all the retirement benefits to the second respondent, which order shall be passed atleast within a period of 6 weeks from the date of receipt of a copy of this order.

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Index:Yes/No

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M.S.RAMESH,J.

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