



W.P.No.28760 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.28760 of 2017

and

W.M.P.No.30957 of 2017

& W.M.P.Nos.26719 & 26805 of 2018

The Management
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Vellore Region,
Vellore rep. by its General Manager.

...Petitioner

-Vs-

1.D.Venkatesan

2.The Special Deputy Commissioner of Labour,
D.M.S. Compound, Teynampet,
Chennai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the second respondent made in A.P.No.336 of 2013 dated 28.03.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Ms.S.Pavithra

For Respondent-1: Ms.V.Porkodi
for Mr.V.Ajoy Khose

For Respondent-2: Mr.T.M.Rajangam
Government Advocate



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ORDER

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The first respondent herein while under the service of the petitioner (hereinafter referred to as "Management Corporation") was alleged with charges of absence for 15 days between 25.04.2012 and 10.05.2012. After enquiry, the charges were held to be proved and through an order dated 06.12.2013, the first respondent was dismissed from services. On the same day, the Management Corporation had filed an application under Section 33 (2)(b) of the Industrial Disputes Act, 1947 to the second respondent herein, which came to be rejected on the ground of victimization. Challenging the said order, the present Writ Petition has been filed.

2. Heard Ms.S.Pavithra, learned counsel appearing for the petitioner, Ms.V.Porkodi, learned counsel appearing for the first respondent and Mr.T.M.Rajangam, learned Government Advocate for the second respondent.

3. The learned counsel for the Management Corporation drew attention to the Form-T before the Authority in which they had referred to the first respondent's absence during the years 2009 to 2013 and submitted that in view of these prolonged absence, the Authority



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ought not to have rejected their application.

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4. Per contra, the learned counsel for the first respondent submitted that there was a duty cast on the Management Corporation to substantiate the earlier absence between 2009 and 2013 and having failed to do so, the punishment of dismissal for the charges of 15 days of absence, is disproportionate. The Authority had found that the Management Corporation had not produced any documents supporting the absence of the first respondent for the period between 2009 and 2013. It is in view of this sole reason of non production of evidence for the previous absences, the Authority had come to the conclusion that the punishment was disproportionate to the charges and therefore, there was victimization.

5. By applying the principles laid down by the Hon'ble Supreme Court in the case of **Lalla Ram Vs. D.C.M. Chemical Works Ltd., & Another** reported in **1978 (3) SCC 1**, the impugned order of rejection has been passed by the Authority. In normal circumstances, this Court may not interfere into such a finding particularly, when the Management Corporation has failed to establish their claim to the Authorities with regard to the previous absences, however in the



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instant case, Form-T submitted by the Management Corporation reveals that the first respondent was absent for 315 days in the year 2009; 324 days in the year 2010; 336 days in the year 2011; 353 days in the year 2012; and for the year 2013 till 20.01.2013, it has been wrongly shown as 31 days. The absence seems to be inordinate. However, since the learned counsel for the Management Corporation claims that they have evidence to substantiate the earlier absences of the first respondent herein between 2009 and 2013, this Court is of the view that an opportunity has to be given to the Management Corporation to establish their case before the Authority.

6. In the result, the impugned order dated 28.03.2017 on the file of the second respondent herein, is quashed and the matter is remitted back to the second respondent for fresh consideration. The Management Corporation is at liberty to let in evidence both oral and documentary before the second respondent herein, within a period of 30 days from the date of receipt of a copy of this order. The first respondent is also at liberty to let in evidence, if any, during that period. Thereafter, the second respondent herein shall extend due opportunities to both the Management Corporation, as well as the workman and pass a detailed speaking final order on its own merits



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and in accordance with law, within a period of 30 days therefrom. The Writ Petition stands partly allowed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

07.12.2022

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order

DP

To

- 1.The Special Deputy Commissioner of Labour,
D.M.S. Compound, Teynampet,
Chennai.
- 2.The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Vellore Region,
Vellore.



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M.S.RAMESH,J.

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