



W.P(MD)No.4142 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.4142 of 2022

and

W.M.P.(MD)No.3555 of 2022

The Management,
Tamil Nadu State Transport Corporation Madurai Ltd.,
Rep by its General Manager,
Dindigul Region, Bye Pass Road,
District Collector Office Post,
Dindigul – 624 004.

... Petitioner

Vs

1.The Special Joint Commissioner of Labour,
O/o. Commissioner of Labour,
Chennai – 600 006.

2.J.Velmurugan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 01.10.2021 passed by the 1st respondent in AP No.77 of 2021 as illegal and quash the same.

For Petitioner : Mr.J.Senthil Kumaraiah

For Respondents : Mr.A.K.Manikkam,
Special Government Pleader.
Mr.S.Saravanan for R2.



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ORDER

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Heard the learned counsel for the writ petitioner/Management, the learned Special Government Pleader for the first respondent and the learned counsel for the second respondent/employee.

2.The second respondent herein joined in the writ petitioner corporation as Conductor in the year 2019. He had allegedly indulged in acts of misappropriation while discharging his duty. He was dismissed from service on 26.02.2021. Thereafter, the Management filed approval petition No.77 of 2021 under Section 33(2)(b) of Industrial Dispute Act before the first respondent. By the impugned order dated 01.10.2021, the first respondent declined to grant approval. Challenging the same, the present writ petition has been filed.

3.The learned standing counsel for the Management draws my attention to the decision of the Hon'ble Supreme Court reported in **(2019) 18 SCC 47 (John D'Souza Vs. Karnataka State Road Transport Corporation)**. Paragraph No.30 of the said judgment reads as follows:-

“30. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under [Section 33\(2\)\(b\)](#) in two phases. Firstly, the Labour Court/Tribunal will consider as to



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whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified. That is the precise ratio – decendi of the decisions of this Court in (i) Punjab National Bank, (ii) Mysore Steel Works Pvt. Ltd. and (iii) Lalla Ram's cases (supra).”

4. Applying the aforesaid ratio, I hold that the first respondent ought to have given opportunity to the petitioner herein to adduce evidence. Since such an opportunity was denied and straightaway the rejection order was passed, I quash the same. The matter is remitted to the file of the first respondent. Opportunity as contemplated above shall be given to the Management. Till the final order is passed by the first respondent, the Management shall continue to pay Section 17(b) wages to the second respondent herein.



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ias

5.The writ petition is allowed of on these terms. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes/ No

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To:-

The Special Joint Commissioner of Labour,
O/o. Commissioner of Labour,
Chennai – 600 006.

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