



W.P.(MD)No.14390 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2022

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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.14390 of 2014

and

M.P.(MD)No.1 of 2014 and M.P.(MD)No.1 of 2015

The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
By-pass Road,
District Collector Office Post,
Dindigul - 624 004.

... Petitioner

Vs.

1. The Special Deputy Commissioner of Labour,
Office of the Commissioner of Labour,
Chennai - 600 006.

2. P.Radhakrishnan,
Conductor - 60959 (Palani Branch),
6-13-15, Immanuel School Street,
Batlagundu - 624 402.

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the first respondent in his proceedings in Approval Petition No.392 of 2011 dated 27.12.2012 and quash the same.

For Petitioner : Mr.J.Senthil Kumaraiah
for Mr.A.Jeyaram

For Respondents : R1 - Court
Mr.S.Arunachalam
for Mr.R.M.Sivakumar for R2

ORDER

The order passed by the first respondent in Approval Petition No.392 of 2011 dated 27.12.2012, is under challenge in the present Writ Petition.

2. The learned counsel for the petitioner submitted that the second respondent was working as a Conductor in the petitioner Corporation in the bus bearing Registration No.TN-57-N-1156 plying from Palani to Kuthiraiaru route. He collected Rs.27/- (Rupees Twenty Seven only) from six persons and issued a six reissued tickets for a sum of Rs.27/- (Rupees



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Twenty Seven only). He also received a sum of Rs.12/- (Rupees Twelve only) from the six persons and not issued the tickets. Thus, he misappropriated a sum of Rs.39/- (Rupees Thirty Nine only) with dishonest intention. The disciplinary action was taken against him. After completion of enquiry, he was dismissed from service on 08.01.2008. At the instance of the workman, the Approval Petition was submitted on 30.09.2011. The said Approval Petition was dismissed. Challenging the order of dismissal, this Writ Petition is filed. Further, the learned counsel for the petitioner submitted that the workman, namely, the second respondent ought to have taken the matter before the Labour Court under Section 33A of the Industrial Disputes Act, 1947 and the second respondent is not entitled for any relief.

3. Per contra, the learned counsel for the second respondent submitted that the Approval Petition was not filed simultaneously, along with the order of dismissal. One month salary was not paid immediately. There was an industrial dispute pending concerning the workman including



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the second respondent and that Approval Petition was not filed immediately and the same was rejected. Thus, he prayed for the dismissal of this Writ Petition.

4. I have considered the rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

5. Section 33(2) of the Industrial Disputes Act deals with approval of action taken by the employer when it amounts to change the conditions of service of a workman during the pendency of the proceedings. It reads as follows:

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--



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(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.

(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,--

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

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



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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."

6. It is made clear from Section 33(2) of the Industrial Disputes Act, 1947, that if a workman is involved in any matter not connected with the pending Industrial Dispute, the employer can alter the conditions of service for any misconduct not connected with the dispute. It may discharge or punish the workman subject to payment of one month's wage and file an application to the authority for approval of the action taken by the employer.

7. In the case on hand is that admittedly, the second respondent was dismissed from service on 08.01.2008 and the Approval Petition was filed only on 30.09.2011. According to the learned counsel for the petitioner, there was no industrial dispute pending concerning workman and it was not necessary to seek approval for dismissal. However, the first



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respondent insisted for filing the Approval Petition and therefore, the Approval Petition was filed by the petitioner. The petitioner cannot take such a plea that the Approval Petition was filed at the instance of the first respondent. If it is of the firm view that there is no industrial dispute pending concerning workman and therefore, there is no need to seek approval for the dismissal order, it should not have filed the Approval Petition even it was insisted by the first respondent. Having filed the Approval Petition, it is not open to the petitioner to contend that the second respondent ought to have raised industrial dispute before the Labour Court under Section 33A of the Industrial Disputes Act. Admittedly, there is a delay in filing the Approval Petition. The contention is that one month salary was not paid immediately and it is found that one month salary was not paid in time. When it is clearly established that Approval Petition was not filed immediately, the rejection of Approval Petition by the authority, in the considered opinion of this Court, is deserved to be confirmed.



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8. Accordingly, this Writ Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

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