



W.P.No.35367 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.35367 of 2006

And

M.P.No.1 of 2006

The Tamilnadu State Transport Corporation
(Villupuram) Ltd.,
rep. by its General Manager,
Vellore.

... Petitioner

Vs.

1.The Joint Commissioner of Labour
(Conciliation) DMS Compound,
Teynampet,
Chennai – 6.

2.U.Kuppuraj

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in Approval Petition No.375 of 2003 dated 02.05.2005 and quash the same.

For Petitioner : Mrs.S.Pavithra
For Respondents : Mr.Abishek for R1
Government Advocate
Mr.K.Gnana Sundaram for R2



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ORDER

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The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records of the first respondent in Approval Petition No.375 of 2003 dated 02.05.2005 and to quash the same.

2.The case of the petitioner is that the second respondent was working as Conductor in the petitioner Corporation and since he absented himself from duty from 17.03.2002 to 15.04.2002 in violation of the standing orders, he was removed from service vide order dated 12.10.2003 and thereafter the Management of the petitioner Corporation filed a petition before the first respondent in Approval Petition No.375 of 2003 seeking approval for the dismissal of the second respondent under Section 33(2) (b) of the I.D.Act, however, vide impugned order the first respondent rejected the said petition. Hence this writ petition.

3.The learned counsel for the petitioner submitted that charge memo was issued to the second respondent and enquiry was conducted and since the explanation given by the second respondent was not convincing he was removed from service. Hence, the second respondent was removed from service only after following the



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principles of natural justice and the impugned order is not sustainable one.

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4.The learned counsel appearing for the second respondent submitted that the second respondent was appointed as Conductor on 07.12.1991 and worked in various Depots without violating any rules and regulations. Since the second respondent was ill, he was absent from duty from 17.03.2002 to 15.04.2002, for which, he has given proper medical certificate to the concerned Authority of the petitioner Corporation. However, charge memo was issued to the second respondent and without considering his past services and the explanation given by him, the second respondent was removed from service. The learned counsel further submitted that the mandatory provisions under Section 33(2) (b) of the Industrial Disputes Act, 1947 read with Rule 64(2) of the Tamilnadu Industrial Disputes Rules, 1958 was not followed while the second respondent was removed from service, which is in violation of principles of natural justice and hence, the impugned order warrants no interference.

5.Heard both sides and perused the materials available on record.



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6.A perusal of the order impugned in this writ petition that is dismissal order passed in the Approval Petition would go to show that the first respondent clearly pointed out that no *prima facie* case has been made out against the second respondent in the domestic enquiry. The first respondent also pointed out that the petitioner Corporation failed to comply with the mandatory condition of Section 33(2) (b) of the Industrial Disputes Act regarding payment of one month wages at the time of dismissal, thereby not complied with mandatory provisions.

7.It is settled principle of law that when the Management failed to comply with the provisions of Section 33(2) (b) of the Act, clearly it amounts to unfair labour practice. The contravention of Section 33(2)(b) proviso would drive the employee to have recourse to one or more proceeding by making a compliant. The Constitution Bench of the Honourable Supreme Court in the decision ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal Sharma and others (2002 (2) SCC 244)***, agreed and endorsed the view taken in the case of Strabboard and Tata Iron & Steel Co., wherein it is *held as under:-*

"order of dismissal or discharge being incomplete and inchoate until the approval is obtained, cannot effectively terminate the relationship of the employer



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and employee and that if the approval is not accorded by the tribunal, the employer would be bound to treat the respondent as its employee and paying his full wages for the period even though the employer may subsequently proceed to terminate the services of the respondent".

8.In view of the above settled proposition of law, the findings arrived by the first respondent, does not require any interference by this Court.

9.The writ petition is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.02.2023

pri

Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

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