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W.P.No.6693 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.6693 of 2023

and

W.M.P.No.6744 of 2023

The Management,
Tamil Nadu State Transport
Corporation (Salem) Limited,
Dharmapuri Region,
Bharathipuram, Salem Main Road,
Dharmapuri - 5.

...Petitioner

Vs

1.R.Kubendran

2.The Special Joint Commissioner of Labour,
DMS Campus, Anna Salai,
Chennai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 03.12.2021 passed by the second respondent in Approval Petition No.140 of 2020 and quash the same, consequently direct the second respondent to approve the order of the petitioner dated 08.09.2020 dismissing the first respondent from service.



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For Petitioner : Mr.K.Raja

For R2 : Mr.Yogesh Kannadasan,
Special Government Pleader

ORDER

Heard Mr.K.Raja, learned Standing Counsel for the petitioner Corporation and Mr.Yogesh Kannadasan, learned counsel for the second respondent.

2. Since this Court is dismissing the Writ Petition, no prejudice would be caused to the first respondent workman and hence, notice to the first respondent is hereby dispensed with.

3. The first respondent herein was dismissed from service, through an order dated 08.09.2020 by the petitioner Corporation. The order of dismissal was pursuant to a domestic enquiry conducted, in which the charges against him were held as proved. The petitioner Corporation had filed an application on 14.09.2020 under Section 33(2)(b) of the Industrial Disputes Act, 1947 [hereinafter referred to as 'the Act'], seeking for approval of the dismissal order. Their application came to be



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rejected through the impugned order dated 03.12.2021, which is under challenge in the present writ petition.

4. The Authority under the Act had passed the impugned order, by placing reliance on four circumstances, as laid down by 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***. Among these grounds, the principles of natural justice were violated during the course of enquiry; there was no prima facie case before the Enquiry Officer; the order of dismissal was by way of victimization; and that the application under Section 33(2)(b) of the Act was not filed simultaneously, but after a delay of six days.

5. A perusal of the impugned order would reveal that when the first respondent herein had sought for furnishing of certain documents, the same was not furnished. The requisition made by the first respondent herein was also marked as an exhibit. By taking into account of this aspect, the Authority had found that the principles of natural justice were



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violated during the course of enquiry, since the documents sought for by the respondent were not furnished.

6. Secondly, the Authority had earlier taken into account that the relevant witnesses were not examined during the course of enquiry and that the complainant, who was the prime witness, was one among them. It is on this basis, it was found that there was no prima facie evidence before the Enquiry Officer for holding the charges as proved.

7. Thirdly, the Authority had taken into account the plea of the first respondent that due to his indulgence in the Trade Union activities, he had been victimized by way of an order of dismissal. To substantiate such a stand, the Labour Court had taken note of the earlier order passed by this Court in a Writ Petition filed by the first respondent herein, in this regard. It was further found that since there was no prima facie evidence before the Enquiry Officer and inspite of the same, the Disciplinary Authority had passed the order of dismissal, for the petitioner's involvement in the trade union activities, the Labour Court had found it to be a case of victimization.



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8. This apart, the Labour Court had also taken into account that the application under Section 33(2)(b) of the Act was filed only on 14.09.2020, after a lapse of six days from the date of dismissal i.e., 08.09.2020 and since the application was not filed simultaneously, the impugned order of rejection was passed.

9. I do not find any infirmity with the findings of the authorities. The Hon'ble Supreme Court in the case of ***Lalla Ram (supra)*** held that, when any one of the circumstances mentioned therein is violated, the Authority will be well within his powers to reject the approval petition. In this case, four of the circumstances have been violated by the Disciplinary Authority and thus, the principles laid down in ***Lalla Ram's case (supra)*** would squarely apply and hence, there is no infirmity or illegality in the order of the authority.

10. This Court has been handling various Writ Petitions filed by the Tamil Nadu State Transport Corporation challenging orders rejecting



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the approval petition under Section 33(2)(b) of the Act and in many of such cases, the well considered orders of the Authority have been put under challenge, inspite of the fact that there were no legally substantiable grounds for challenge. The present case is one such case.

11. Among various grounds on which the approval petition was rejected, one of the ground is that there is a delay of six days in filing the approval petition. Section 33(2)(b) of the Act provides that when a workman is dismissed from service and a conciliation proceeding touching upon the service condition of the concerned workman is pending before the Authorities, the application under Section 33(2)(b) of the Act requires to be filed simultaneously. The term 'simultaneously' has been dealt with in various decisions of this Court, as well as the Hon'ble Supreme Court and in all the decisions, the meaning given to the term 'simultaneously' would be on the same day of dismissal. There is not a single precedent from any one of the High Courts in the Country or the Hon'ble Supreme Court of India which condones the delay of six days in filing an application under Section 33(2)(b) of the Act.



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12. The learned Standing Counsel for the petitioner Corporation made an attempt to submit that they had filed the application under Section 33(2)(b) of the Act on 08.09.2020 itself, which is the day of dismissal. In support of such a claim, the learned counsel produced a copy of the covering letter sent by the Transport Corporation to the Special Joint Commissioner of Labour, Chennai, who is the Authority under the Act to deal with an approval petition. The postal receipt for having dispatched the letter is also produced before this Court.

13. The receipt of the Postal Department merely states that a cover has been sent to the Special Joint Commissioner of Labour, Chennai on 08.09.2020 at 18.16 hours. There is no other document to correlate the postal receipt with that of the covering letter dated 08.09.2020. It requires to be borne in mind that the Transport Corporation deals with hundreds of approval petitions among its vast number of employees. If at all the petitioner Corporation was of the view that this application was sent on 08.09.2020, the appropriate mode of proof would be to substantiate this before the Authority, while the application under Section 33(2)(b) of the Act was taken up for hearing. The petitioner Corporation



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could have let in sufficient evidence to correlate the postal receipt with that of the covering letter, which aspect has not been exercised by them. Having failed to prove the postal receipt before the Authority, this Court, exercising its powers under Article 226 of the Constitution of India, will not venture to deal into such disputed facts. Thus, there is no merit in the claim made by the learned Standing Counsel for the petitioner Corporation.

14. In the light of the above findings, I do not find any reason to entertain the present Writ Petition. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation/Yes/No
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To

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M.S.RAMESH,J.

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