



WEB COPY



W.P.No.10604 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.10604 of 2018
and W.M.P.No.12568 of 2018

M/s.Tamil Nadu State Transport Corporation (Salem) Limited,
12, Ramakrishna Road,
Salem – 636 007.

... Petitioner

Vs.

1.D.Siva Kumar

2.The Special Deputy Commissioner of Labour,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the order dated 28.03.2017 passed by the second respondent in A.P.No.250 of 2013 and to quash the same.

For Petitioner : Mr.R.Babu
Standing Counsel

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records relating to the order dated 28.03.2017 passed by the second respondent in A.P.No.250 of 2013 and to quash the same.



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2. The case of the petitioner is that, the first respondent was working as a conductor in the petitioner Corporation and from 22.05.2012, he had unauthorizedly absented himself from service without prior permission or leave application, thereby, a charge memo dated 26.06.2012 was issued to the first respondent. Thereafter, Enquiry Officer was appointed and the Enquiry Officer conducted domestic enquiry on 26.11.2012 and 29.01.2013. However, the first respondent not participated in the enquiry proceedings, thereby, the *ex-parte* minutes was drawn as against the first respondent. Thereafter, second show cause notice was issued on 24.03.2013, however, upon receipt of the same, the first respondent had not replied. Therefore, the final order of dismissal was passed on 29.07.2013 by dismissing the first respondent from service and one month salary was also sent to him on the same date. Subsequently, the petitioner Corporation made an application in A.P.No.250 of 2013 under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'the Act') for approval of the dismissal, which was ultimately rejected by order dated 28.03.2017. Challenging the same, the above writ petition is filed.

3. The learned counsel for the petitioner Corporation submits that, the first respondent had deliberately not participated in the domestic enquiry despite notice service on him. Therefore, by considering the past misconduct



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committed by the first respondent, punishment of dismissal from service was passed by the petitioner Corporation. However, the said facts were not properly considered by the second respondent and the second respondent mechanically arrived at a conclusion that no opportunity was given to the first respondent before the order of dismissal, which is not sustainable.

4. Further, he submits that to prove the payment of one month salary, cheque and other proofs were filed before the second respondent, thereby, the second respondent has to fix the responsibility against the first respondent to disprove the same. However, the first respondent averred that he received the one month salary belatedly. Though the first respondent himself admitted that he received one month salary, however, the second respondent held that one month salary was not paid to the first respondent, which is not sustainable. Accordingly, he prays for allowing the writ petition.

5. Though notice was service on the first respondent, however, no one appeared on behalf of the first respondent. Considering the pendency of this writ petition, this Court is inclined to dispose of this writ petition based on the available records.



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6. Admittedly, the first respondent was employed as a conductor in the petitioner Corporation. It is alleged that he has unauthorizedly absented himself from duty from 22.05.2012, for which, a charge memo was issued on 26.06.2012, thereafter, enquiry was conducted as against the first respondent and second show cause notice was issued 24.03.2012. Thereafter, order of dismissal was passed on 29.07.2013. After the dismissal, the petitioner Corporation filed approval petition before the second respondent in A.P.No.250 of 2013 and the second respondent rejected the same on the ground that the enquiry was not conducted in a fair and proper manner and the proof for last drawn wages were not filed before the second respondent.

7. This Court perused the impugned order, from which, it is seen that the petitioner Corporation drawn *ex-parte* minutes as against the first respondent, which clearly reveals that no opportunity was given to the first respondent before order of dismissal. Further, the petitioner Corporation deliberately failed to produce the service of the notice to the first respondent during the disciplinary proceedings. It is also seen that the proof for last drawn wages was also not produced before the second respondent, enabling the second respondent to compare the payment of one month salary with the pay slip. Hence, the order of dismissal is contrary to the decision rendered by the Apex



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Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works***

Ltd. & Ors. reported in ***AIR 1978 SC 1004.***

8. Further, once the workman had put in considerable years of service, dismissing him only on the ground of unauthorized absence is disproportionate. Further, the absence from duty without any application or prior permission may amount to unauthorized absence, but it does not mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization etc, but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

9. Therefore, this Court finds no infirmity or illegality in the order passed by the second respondent and this writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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M.DHANDAPANI, J.,

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To

The Special Deputy Commissioner of Labour,
Chennai.

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