



W.A.No.858 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

Writ Appeal No.858 of 2023
and CMP.No.8379 of 2023

Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Vellore Region,
Vellore,
Rep. By its Managing Director

.. Appellant

Vs.

1. The Joint Commissioner of Labour (Conciliation),
Teynampet, Chennai.
2. A.Kumar
Conductor -Staff No.9730

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the
order dated 29.06.2022 in WP.No.39072 of 2005 passed by the Single
Judge of this Court.

For appellant : Mr.M.Aswin
For respondents
for R1 : Mr.P.Ganesan, G.A.
for R2 : Mr.V.Ajay Khose

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JUDGMENT

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(The Judgment of the Court was delivered by S.VAIDYANATHAN, J)

The petitioner/Transport Corporation has come up with this appeal challenging the order passed by the learned Single Judge in confirming the order of the Joint Commissioner of Labour (Conciliation), Chennai in Approval Petition No.82 of 2004, dated 29.06.2022.

2. Learned counsel for the Petitioner/Transport Corporation contended that the domestic enquiry was conducted in a fair and proper manner according to the Principles of Natural Justice and further *prima facie* case has been made against the Second Respondent for dismissing him from service. He further submitted that the decision taken by the first respondent and learned Single Judge are not in consonance with the guidelines framed by the Hon'ble Apex Court in the decision rendered in the case of ***Lalla Ram vs. Management of D.C.M. Chemical Works Ltd. reported in AIR 1978 SC 1004.***

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3. Learned counsel for the Second Respondent contended that admittedly since there is a short-fall in payment of one month wages to the Second Respondent/Employee, the First Respondent Authority has rightly come to the conclusion that the Petitioner has not paid one month wages to the Second Respondent at the time of dismissal and hence the order passed in the Approval Petition need not be interfered with.

4. Heard both sides. Perused the records.

5. It is seen that, the first Respondent/Authority has rejected the Approval Petition filed by the Petitioner/Transport Corporation on the ground that, **one month wages was not paid to the employee at the time of dismissal**. For better appreciation, relevant portion of the order passed by the 1st Respondent/Authority in the Approval Petition, is extracted hereunder:

"Exhibit A4 is the Xerox copy of the pay slip of the Opposite Party for the month of February 2004. This contains the rate of wages of the Opposite Party and the rate of basic



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pay payable to the Opposite Party is indicated as Rs.1501.20/-. The applicant had not indicated as to why when the rate of dearness allowance payable to the Opposite Party is Rs.1501.20/- while dismissing the Opposite Party from its services it had reckoned Rs.1390.50 as his dearness allowance. I hold based on Exhibit A4 that the dearness allowance payable to the Opposite Party at the time of his dismissal is Rs.1501.20/-. Therefore the one month's wages payable to the Opposite Party at the time of his dismissal should be Rs.6733.95/-. I therefore hold that the Applicant while dismissing the Opposite Party from its services had not paid him one month's wages and therefore had violated the mandatory conditions of Section 33(2)(b) of the Industrial Dispute Act 1947. As the Applicant had violated the mandatory conditions of Section 33(2)(b) of the Industrial Disputes Act 1947 I refuse to accord approval for his dismissal. As I had found that the Applicant had not complied with the mandatory conditions of Section 33(2)(b) of the Industrial Disputes Act 1947 and therefore approval for the dismissal of the Opposite Party Thiru A.Kumar, Conductor, Staff Non.9730 should be refused. I am not going into the other issues."



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6. In the order dated 01.09.2004 passed in the Approval Petition, the 1st Respondent/Authority has clearly dealt with the payment of wages to the Second Respondent/employee. It is clear from the discussion that, the Petitioner/Transport Corporation has not properly calculated the payment of one month wages to the employee. As there is shortfall in the payment of one month wages to the employee, the Authority has rightly rejected the Petitioner's Approval Petition. Further the Authority has clearly discussed the decision of the Hon'ble Apex Court in the case of ***Strawboard Manufacturing Co. Ltd., vs. Gobind*** reported in ***1962 II LLJ 420***.

7. Challenging the order of the 1st Respondent/Authority, Writ Petition in WP.No.39072 of 2005 was filed by the Transport Corporation. The learned Single Judge while dismissing the said writ petition by order dated 29.03.2022 has observed as follows:

"7. As per the above provision, it is a mandatory condition that while dismissing a workman from service, his employer should pay his wages for one month. Before the first respondent Court, a photocopy of the second respondent's



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pay slip for the month of February 2004 was marked as Ex.A4, in which, the rate of basic pay payable to him is indicated as Rs.4,215/- and the rate of dearness allowance payable to him is indicated as Rs.1,501.20/- respectively. On the basis of the said exhibit, the first respondent Court held that at the time of dismissal of second respondent from service, the dearness allowance payable to him is Rs.1,501.20/- and the one month's wages payable to him is Rs.6,733.95/- and thereby, petitioner Corporation has violated the aforesaid mandatory condition which was stipulated under Section 33(2)(b) of the ID Act. Therefore, the first respondent Court has rightly rejected the Approval Petition of the petitioner Corporation"

8. The learned counsel for the petitioner fairly conceded before this Court that there is a Shortfall of one month salary and the same is not refuted by him.

9. When there is a shortfall of one month pay, approval has got to be rejected, which has been rightly done by the authority. We find that there is no need to interfere with the order of the authority, which is rightly



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confirmed by the learned Single Judge and hence, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.V.N.J.) (R.K.M.J.)
18.04.2023

Speaking Order: Yes / No
pvs

To
The Joint Commissioner of Labour (Conciliation),
Teynampet, Chennai.



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