



W.P.No.10668 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.10668 of 2018
and
W.M.P.No.12615 of 2018

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

Vs.

1.C.Rajendran

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 14.11.2016 passed by the second respondent in A.P.No.187 of 2010 and to quash the same.

For Petitioner : Mr.R.Babu
Standing Counsel

For Respondents : M/s.V.Porkodi [R1]
Labour Commissioner [R2]



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ORDER

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This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records relating to the order dated 14.11.2016 passed by the second respondent in A.P.No.187 of 2010 and to quash the same.

2. The case of the petitioner is that, the first respondent was working as a driver in the petitioner Corporation and from 25.03.2009, he had unauthorizedly absented himself from service without prior permission or leave application, thereby, a charge memo dated 19.05.2009 was issued to the first respondent. Thereafter, domestic enquiry was conducted on 03.11.2009. However, the first respondent not participated in the enquiry, thereby, the *ex-parte* minutes was drawn as against the first respondent. Thereafter, second show cause notice was issued on 25.04.2010, however, upon receipt of the same, the first respondent had not replied. Therefore, the final order of dismissal was passed on 08.10.2010 by the petitioner Corporation 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.187 of 2010 under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'the I.D. Act') for



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approval of the dismissal, which was ultimately rejected by order dated 14.11.2016. Challenging the same, the above writ petition is filed.

3. The learned Standing Counsel appearing for the petitioner Corporation submits that, the Labour Officer held that the enquiry was conducted in a fair and proper manner and the punishment was imposed on the *prima facie* evidence and one month salary was paid. However, the Labour Officer arrived at a conclusion that there is an unfair labour practice on the ground that the punishment of dismissal from service imposed by the petitioner Corporation for unauthorized absence and using the words 'Harsh Punishment', is not sustainable.

4. Further, he submits that though the present writ petition is filed solely on the ground that whether the Labour Officer is entitled to consider the punishment imposed by the petitioner Corporation is highly disproportionate or not. However, such a power is available only to the Labour Court while exercising power under Section 2A(2) r/w Section 11A of the I.D. Act. Such a power is not available to the Labour Officer while dealing with the approval petition in terms of Section 33(2)(b) of the I.D. Act. Accordingly, he prays for allowing the writ petition.



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5. The learned counsel appearing for the first respondent submitted that, for mere unauthorised absence, the petitioner Corporation imposed a punishment of dismissal from service, which is highly disproportionate and the second respondent, after considering all the above said facts, passed the impugned order rejecting the approval petition, which does not warrant interference of this Court. Accordingly, he prays for dismissal of the above writ petition.

6. Heard the learned Standing Counsel appearing for the petitioner Corporation and the learned counsel appearing for the first respondent and perused the materials available on record.

7. Admittedly, the first respondent was employed as a driver in the petitioner Corporation. It is alleged that he has unauthorizedly absented himself from duty from 25.03.2009, for which, a charge memo was issued on 19.05.2009, thereafter, enquiry was conducted as against the first respondent and second show cause notice was issued 25.04.2010. Thereafter, order of dismissal was passed on 08.10.2010. After the dismissal, the petitioner



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Corporation filed an approval petition before the second respondent in A.P.No.187 of 2010 and the second respondent rejected the same.

8. It is an undisputed fact that the approval petition has to be decided based on the law laid down by the Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, wherein the Apex Court held as under:-

"(i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;

(ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;

(iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;

(iv) whether the employer has paid or offered to pay Wages for one month to the employee; and

(v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."



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9. In the present cases, though the second respondent held that the petitioner Corporation satisfied the procedures contemplated in the case of ***Lalla Ram (supra)***, but rejected the approval petition filed by the petitioner Corporation solely on the ground that, the punishment imposed for the misconduct committed by the first respondent is too harsh. However, the fact remains that, while dealing with the approval petitions filed under Section 33(2)(b) of the I.D. Act, the second respondent has no such power to modify or question the punishment imposed by the petitioner Corporation, unless the dismissal order is challenged in the manner known to law and the observation made by the second respondent in the impugned order cannot be sustained. Hence, the order passed by the second respondent in the approval petition is liable to be interfered with as the same is perverse.

10. At this point, the learned counsel appearing for the first respondent in this writ petition sought liberty of this Court to challenge the dismissal order in the manner known to law.



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11. In view of the above, the impugned order passed by the second respondent in A.P.No.187 of 2010 dated 14.11.2016 is set aside and the first respondent is at liberty to challenge the order of dismissal passed by the petitioner Corporation in the manner known to law and the period pending before the Labour Officer and this Court is excluded for the purpose of limitation and it is made clear that, the limitation prescribed under Section 2A3 of the I.D. Act, shall starts from the date of this order i.e., 01.09.2023.

12. With the above observations and directions, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

01.09.2023

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

The Special Deputy Commissioner of Labour,
Chennai.



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M.DHANDAPANI, J.,

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