



WP.No.1154 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P No.1154 of 2018
& WMP.No.1434 of 2018

The General Manager,
State Express Transport Corporation (Tamilnadu) Limited,
PalavanSalai, Chennai-2. ...Petitioner

Vs

1.V.Antony (Deceased)

2.The Special Deputy Commissioner of Labour,
D.M.S.Compound,
Chennai.

3.A.Geetha

(R3 substituted as LR of deceased 1st respondent vide order
dated 30.03.2023 made in W.M.P.No.20324 of 2018 in W.P.No.1154 of 2018)

...Respondents



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PRAYER : Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari or any writ, order or direction to call for the records of the 2nd respondent made in A.P.No.317/2011 dated 25.03.2015 and to quash the same as illegal and against the provisions of the Industrial Disputes Act,1947.

For Petitioner : Mr.K.Kathiresan

For Respondent-2 : Mr.M.S.Prem Kumar,
(Government Advocate)

For Respondent-3 : Mr.D.Soundar Raj

ORDER

Aggrieved by the impugned Award in A.P.No.317 of 2011, the petitioner corporation is before this Court.

2. The facts leading to filing of this case are stated as follows :

The petitioner herein is a Transport Corporation and the 1st respondent is the workman. The 1st respondent was working as a conductor in the petitioner corporation. On 13.06.2008, while he was assigned the duty in the bus proceeding from Tirupati to Nagercoil, it was found by the Checking Inspectors of the Petitioner Corporation that the 2nd respondent



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has received a sum of Rs.2500/- from a group of passengers and has failed to pay the rest of the ticket amount of Rs.70/- to said group of passengers, for which he was issued with a charge memo. Being unsatisfied with the reply given by the 1st respondent, an enquiry officer was appointed for conducting a departmental enquiry. After conducting the enquiry, the enquiry officer submitted a report, in which, the charges against the 1st respondent were proved. Being unsatisfied with the reply given by the 1st respondent, a second show cause notice was issued to him, however, the reply given by the 1st respondent was not satisfactory. Hence, he was dismissed from service on 24.08.2011. In order to approve the said dismissal, the petitioner corporation filed an approval petition in A.P.No.317 of 2011 under Section 33(2)-b of the ID Act before the 1st respondent Labour Court, which was dismissed on the ground that the workman has not been paid one month salary. Challenging the same, the petitioner corporation has filed this Writ Petition.

3. Learned counsel for the petitioner corporation would submit that the approval petition filed under Section 33(2)-b of the Industrial Disputes



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Act has been rejected by the 2nd respondent contrary to the ratio laid down by the Hon'ble Apex Court in case of ***Lalla Ram Vs. Management of D.C.M Chemical Works Ltd and Ors*** in Civil Appeal No.351 of 1971 dated 16.02.1978 in which, the Apex Court has prescribed the procedure to be followed while deciding the approval petition. However, contrary to the said procedure, the 2nd respondent has rejected the approval petition filed by the petitioner Corporation.

4. Per Contra, learned counsel for the 3rd respondent would submit that there is a shortfall in the payment of monthly wages and that one month salary has not been fully paid. He further submits that it is mandatory under Section 33(2)-(b) of the Industrial Disputes Act that one month wages has to be paid to the employee and there should not be any shortfall. However, in the present case, there was a shortfall in payment of monthly wages. Hence, the finding rendered by the Labour Court that the workman was not paid with full one month wages is fully justified which needs no interence.



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5. Heard the learned counsel appearing on either side and perused the materials available on record.

6. It is alleged that, in the case on hand, the 1st respondent/workman having collected a ticket fare of Rs.2500/- from a group of passengers had failed to give the balance amount of Rs.70/- to them. For the said misconduct, after conducting a departmental enquiry, the workman was dismissed from service. In order to approve the said dismissal, the petitioner corporation filed an approval petition under Section 33(2)(b) before the 2nd respondent/Labour Court. 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



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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."

7. In the present case, a perusal of the records reveal that all the above aspects have been elaborately considered by the 2nd respondent while rejecting the approval petition filed by the petitioner Corporation. It is evident from the materials available on record that, the enquiry has not been conducted in a free and fair manner which clearly shows that the workman was not given an opportunity of hearing to put forth his case, which was the reason for rejection of the approval sought for. Further, there is also no material to substantiate the compliance of payment of one month's salary. There being non-compliance of the provisions, the order passed by the 2nd respondent does not suffer any vice of illegality and the rejection of the approval petition is fully justified which cannot be interfered with.



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8. For the reasons aforesaid, this Writ Petition is devoid on merits and the same stands dismissed accordingly. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

NHS

To

The Special Deputy Commissioner of Labour,
D.M.S.Compound,
Chennai.



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M.DHANDAPANI,J

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