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W.P.No.12945 of 2019
and W.M.P.No.13106 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.12945 of 2019
and W.M.P.No.13106 of 2019

The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Cuddalore Region,
Cuddalore - 607 002.

... Petitioner

Vs.

1.J.Govindan

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

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the second respondent made in A.P.No.483/2011 dated 14.09.2017 and quash the same.

For Petitioner	: Mr.M.Aswin
For R1	: Mr.D.Muthukumar
For R2	: Mr.D.Gopal, GA



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ORDER

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Challenge in this writ petition is made to the orders passed by the Special Deputy Commissioner of Labour, Chennai in A.P.No.483/2011 dated 14.09.2017.

2. The first respondent, J.Govindan was working as a Conductor with the writ petitioner Corporation from 06.11.1984. His services were regularized from 01.04.1986. He absented himself from duty from 24.04.2009, for which a charge memo was issued to him and in the Departmental Enquiry, the Enquiry Officer had held that the charges framed against the first respondent are proved. After issuing second Show Cause Notice, the writ petitioner removed him from service with effect from 22.10.2011. Thereafter, the Management filed an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the Special Deputy Commissioner of Labour, Chennai in A.P.No.483/2011. The Special Deputy Commissioner of Labour, Chennai, after analysing the evidence on record, dismissed the Approval Petition on the following grounds :

- i. The petitioner has not been paid one full month wages and there is a deficit amount of Rs.292/-.



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ii. The Approval Petition was filed with an abnormal delay of 23 days.

Aggrieved over the dismissal, the present Writ Petition is filed.

3. Mr.M.Aswin, learned counsel for the writ petitioner would contend that there is no time limit prescribed either under Section 33(2)(b) of the Industrial Disputes Act, 1947 or Rule 64(2) of the Industrial Disputes Rules and the delay of 23 days cannot said to be abnormal. His further contention is that Rule 64(2) of the Industrial Disputes Rules stipulates that the Management after filing the Approval Petition should submit a copy of the Approval Petition simultaneously to the delinquent employee. He also relied on the decision of the Hon'ble Supreme Court in ***S.Ganapathy and others Vs. Air India and another*** reported in (1993) 3 SCC 429 and contended that the Approval Petition cannot be rejected on the ground that the deduction resulted in payment of an amount less than one month's wages in violation of Section 33(2)(b) of the Industrial Disputes Act the Tribunal can make its order of approval conditional on payment of the amount deducted to the workman. He drew the attention of this Court to Form 'T' submitted by the General Manager of petitioner's Corporation in which the Management had clearly undertaken to pay the



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balance amount if any to the employee. In such circumstances, the order passed by the Special Deputy Commissioner of Labour, Chennai is perverse, is his contention.

4. *Per contra*, Mr.D.Muthukumar, learned counsel for the first respondent would contend that since the first respondent was indisposed he could not attend duty and this aspect was also well known to the Management. His further contention is that the employee was not given one full month wages as per Section 25(F) of the Industrial Disputes Act and the Management also did not file the Approval Petition simultaneously or within a reasonably short period as laid down in ***Lalla Ram Vs DCM Chemical Works Limited*** reported in ***1978(3) SCC***.

5. At the outset it may be observed that the first respondent unauthorizedly absented himself from duty since 24.04.2009. According to the first respondent, he was not having good health and therefore, he could not attend duty. It is true that he did not submit medical leave letter along with medical certificate to the Management. Therefore, he was removed from service after conducting enquiry. However, the



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Management did not pay full month salary as per Section 25(F) of the Industrial Disputes Act. The actual monthly salary of the first respondent is Rs.18,476/-. As per Section 12(3) of the Industrial Disputes Act, the first respondent is entitled to get Special Batta at Rs.260/- per day and Risk Allowance at Rs.130/-. Section 2 (RR) of the Industrial Disputes Act defines wages which read thus:

"wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes--

6. Though the learned counsel for the writ petitioner would contend that the risk allowance and daily batta would not form part of the one month wages, the definition of Section 2 (RR) of the Industrial Disputes Act includes all allowances which are payable to the employee and therefore, there is a deficit of Rs.292/- . Moreover, the Management had not explained the 23 days of delay in filing the approval petition. In the decision in ***Lalla Ram Vs DCM Chemical Works Limited*** (cited supra) it has been clearly held that the employer should simultaneously or within a reasonably short time as to form part of the transaction apply to the authorities concerned for approval of the action taken by him. In the



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instant case, the Management had filed the Approval Petition with a delay of 23 days and the delay had also not been explained. In the circumstances, I do not find any reason to interfere with the orders passed by the second respondent.

7. Accordingly, this Writ Petition is dismissed. The orders dated 14.09.2017 in A.P.No.483/2011 passed by the Special Duty Commissioner of Labour, Chennai, is confirmed. No costs. Consequently, connect Writ Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl

R. HEMALATHA, J.



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mtl

To

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

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