



W.P.No.11873 of 2019
and W.M.P.No.12090 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

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

W.P.No.11873 of 2019
and W.M.P.No.12090 of 2019

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

... Petitioner

Vs.

1.P.Viswanathan

2.The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai – 600 006.
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 pertaining to the orders dated 16.07.2018 in A.P.No.25/2015 passed by the Special Deputy Commissioner of Labour, Chennai and quash the same.

For Petitioner	: Mr.M.Aswin
For R1	: Mr.V.Sivaraman
For R2	: Mr.M.Shahjahan, Spl. GP



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W.P.No.11873 of 2019
and W.M.P.No.12090 of 2019

ORDER

Challenge in this writ petition is made to the orders passed by the Special Deputy Commissioner of Labour, Chennai in A.P.No.25/2015 dated 16.07.2018.

2.The first respondent was working as a Conductor in the petitioner Management. On 12.08.2014, when he was on duty in Route No.337N, the checking inspectors made a surprise check and found that the first respondent had collected excess fares to the tune of Rs.16/- from two passengers. However, there was a deficit of Rs.28/- in the cash bag. A charge memo was issued to him and after conducting the domestic enquiry, he was removed from service with effect from 12.01.2015 and thereafter, the petitioner Management filed a petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 in A.P.No.25/2015 before the second respondent Special Deputy Commissioner of Labour, Chennai, seeking approval of the action taken by the Management. The said



W.P.No.11873 of 2019
and W.M.P.No.12090 of 2019

WEB COPY

petition was dismissed by the second respondent vide its orders dated 16.07.2018 on the following grounds :

- a) The principles of natural justice had not been followed while conducting departmental enquiry. Therefore, the first respondent was victimized.
- b) The petitioner Management has not paid full one month wages to the employee.
- c) The approval petition had been filed with a delay of 28 days.

Aggrieved over the above orders, the present writ petition is filed.

3. Mr.M.Aswin, learned counsel for the writ petitioner contended that as per Rules 64(2) of the Industrial Disputes Rules, it has been held that an employer seeking approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 33 shall present an application in Form “T” in duplicate to such Conciliation Officer, Board, Labour Court or Tribunal either personally or by registered post with acknowledgement due. A copy of it shall also be



W.P.No.11873 of 2019
and W.M.P.No.12090 of 2019

WEB COPY

served simultaneously either personally or by registered post acknowledgement due on the workman or workmen concerned and in the decision in *Lalla Ram Vs DCM Chemical Works Limited* reported in *1978(3) SCC* it has been held that an employer should file approval petition simultaneously. According to him, when the statute has not prescribed any time limit for filing approval petition a delay of 28 days cannot be a ground for dismissing the approval petition.

4. Per contra, learned counsel for the first respondent contended that the Special Deputy Commissioner of Labour, Chennai had clearly analyzed the evidence on record and had come to the correct conclusion.

5. In the instant case, the second respondent had analysed the records and held that the departmental enquiry has not been properly conducted and thus there is a violation of principles of natural justice. The second respondent had come to this conclusion mainly on the ground that no summons were issued to the first respondent with regard to the



W.P.No.11873 of 2019
and W.M.P.No.12090 of 2019

WEB COPY

conduct of the domestic enquiry. But the fact remains that the first respondent participated in the enquiry proceedings and therefore, it cannot be stated that the first respondent was victimized. However, it is seen that the petitioner Management did not pay full month salary and there was a deficit of Rs.642/-.

6. The contention of the learned counsel for the writ petitioner is that the last drawn salary of the first respondent was paid to him calculating the Dearness Allowance as 100%. However, a perusal of records shows that the State Government of Tamilnadu had enhanced the Dearness Allowance as 107% with effect from 01.07.2014 and the first respondent was removed from service only on 12.01.2015. In the circumstances, it has to be held that the first respondent has not been paid full month wages.

7. As regards the delay in filing the approval petition under Section 33(2)(b) of the Industrial Disputes Act, 1947, it has been held in ***Lalla Ram Vs DCM Chemical Works Limited*** (cited supra) that the



W.P.No.11873 of 2019
and W.M.P.No.12090 of 2019

WEB COPY

employer has to file approval petition simultaneously or within such reasonably short time as to form part of the same transaction apply to the authority before which the main Industrial Dispute is pending for approval of the action taken by him. In the instant case, there is a delay of 28 days in filing approval petition and the delay has not been properly explained. In the circumstances, the order of the second respondent is perfectly in order and I do not see any reason to interfere with the same.

8. Accordingly, this Writ Petition is dismissed. The orders dated 16.07.2018 in A.P.No.25/2015 passed by the Special Deputy Commissioner of Labour, Chennai, is confirmed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

09.11.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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W.P.No.11873 of 2019
and W.M.P.No.12090 of 2019

R. HEMALATHA, J.
mtl

To

1.The Special Deputy Commissioner of Labour,
Chennai – 600 006.

W.P.No.11873 of 2019
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