



W.P.Nos.29978 & 29979 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.7.2023

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

W.P.Nos.29978 & 29979 of 2016
and
WMP.Nos.25944 & 25945 of 2016

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Vellore Region,
Rep. by its General Manager

...Petitioner in both W.P's.

Vs

1. M.Chinnathambi (*deceased*)
 2. The Special Deputy Commissioner of Labour (Conciliation),
DMS Compound, Chennai.
 3. C.Kaveri
 4. C.Prabakaran
 5. C.Manivannan
- ...Respondents in W.P.No.29978 of 2016

(R3-R5 substituted as LR's of the deceased R1, vide order of this Court dated 14.06.2022 made in WMP.No.24338/2021 in W.P.No.29978/2016)

Vs.

1. C.Munusamy
 2. The Special Deputy Commissioner of Labour (Conciliation),
DMS Compound,
Chennai.
- ...Respondents in W.P.No.29979 of 2016



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Prayer in W.P.No.29978 of 2016: Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 2nd respondent made in A.P.No.366 of 2012 vide its order dated 24.03.2016, and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

Prayer in W.P.No.29979 of 2016: Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 2nd respondent made in A.P.No.523 of 2012 vide its order dated 24.03.2016, and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner	: Mr.M.Aswin (in both W.P's.)
For Respondents	: Mr.S.John J.Raja Singh, AGP, for R2 (in both W.P's.) : Mr.S.T.Varadarajulu (for R3 to R5 in W.P.No.29978 of 2016 & for R1 in W.P.No.29979 of 2016)

COMMON ORDER

Since the issue involved in both the Writ petitions are similar in nature, they are disposed of by way of this common order.

2. These Writ petitions have been filed seeking quashment of the orders both dated 24.03.2016 made respectively in A.P.Nos.366 and 523 of 2012.



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3. The case of the petitioner is that, the respective 1st respondent in both the writ petitions were working as conductors in the petitioner management and for certain misconduct committed by them, they were dismissed from service, after conducting appropriate enquiry by affording opportunity and simultaneously, the petitioner management filed approval petitions before the 2nd respondent and the same were taken up on file in A.P.Nos.366 & 523 of 2012 respectively. However, the 2nd respondent dismissed the said petitions by the present impugned orders. Challenging the same, the petitioner has come up with these Writ petitions.

4. Learned counsel for the petitioner submitted that, one M.Chinnathambi, the 1st respondent in W.P.No.29978 of 2016 committed an accident while he was in duty and when the petitioner management was about to initiate disciplinary proceedings, he absented himself for duty from August 2006 to June 2007, nearly for a period of one year without any prior intimation, which is an added misconduct. Hence, the petitioner management was left with no option except to initiate disciplinary action and thereby, pursuant to the charge memo dated 31.08.2007 issued by the



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petitioner management, and after completion of the enquiry, as the charges levelled against him were proved, the petitioner passed an order of dismissal dated 03.08.2012 against him. He was also paid one month wages of Rs.5,980/- by way of a cheque dated 20.07.2012. Insofar as one Mr.C.Munusamy, the 1st respondent in W.P.No.29979 of 2016 is concerned, he absented himself for duty from 25.01.2011 to 28.5.2011 without any prior intimation, for which, the petitioner management proceeded to initiate disciplinary action and thereby, pursuant to the charge memo dated 11.07.2011 issued by the petitioner management, and after completion of the enquiry, as the charges levelled against him were proved, the petitioner passed an order of dismissal dated 02.07.2012 against him. He was also paid one month wages of Rs.13,335/- by way of a cheque dated 28.06.2012. Since the bonus dispute was in the midst of dismissal, the petitioner management sought approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 from the 2nd respondent.

5. Though, it is mandatory on the part of the Labour officer that, it has to consider the approval petitions in terms of the law laid down by the



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Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M.***

Chemicals Works Ltd. & Ors. reported in ***AIR 1978 SC 1004***, in which, the Apex Court has prescribed the procedure to be followed while deciding the approval petitions, contrary to the said procedure, the Labour officer rejected the approval petitions filed by the petitioner Corporation, which is wholly unsustainable. Hence, he prayed for appropriate orders.

6. Learned counsel appearing for the respective 1st respondent submitted that, admittedly, the said M.Chinnathambi, the 1st respondent in W.P.No.29978 of 2016 was absent for duty from August 2006 to June 2007, however, the said absence was caused only since the said Chinnathambi suffered from serious medical illness and he also produced the medical certificates to that effect, however, the same was not properly adjudicated by the enquiry officer, which led the petitioner management to mechanically pass the order of dismissal as against him. Further, during the pendency of the Writ petition, the said Chinnathambi passed away, hence, remanding the matter and forcing the legal heirs to face trial will cause much more agony to them.



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7. Insofar as the said C.Munusamy, the 1st respondent in W.P.No.29979 of 2016 is concerned, though departmental proceedings were initiated as against him for unauthorised absence, however, it is pertinent to note that he suffered from chicken pox, due to which, he was unable to report for duty. While so, for mere unauthorised absence, that too only as he suffered from medical illness, he failed to report for duty, for which, the petitioner corporation had imposed a punishment of dismissal from service, which is highly disproportionate and the 2nd respondent, after considering all the above said facts, passed the present impugned orders rejecting the approval petitions, which does not warrant interference of this Court. Further, the said C.Munusamy attained the age of 59 years and he only has one more year of service, that too due to extension of period during the Covid-19 pandemic, at this point of time, setting aside the order passed in the approval petition and forcing the 1st respondent to face trial will not serve any useful purpose. Hence, he submitted that, it would suffice, if this Court modifies the relief in favour of the respective 1st respondent.



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

9. Admittedly, for certain misconducts committed by the respective 1st respondents, the petitioner Corporation has passed the orders of dismissal, for which, the petitioner Corporation filed approval petitions before the 2nd respondent under Section 33(2)(b). 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;



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(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."*

10. In the present cases, though the 2nd respondent held that the petitioner corporation satisfied all the procedures contemplated in the case of **Lalla Ram** (*supra*), rejected the respective approval petitions filed by the petitioner corporation on the grounds that, the petitioner management failed to pay the appropriate wages insofar as the said Chinnathambi is concerned and insofar as the said Munusamy is concerned, dismissal of the employee from service for unauthorized absence was a harsh punishment and that the petitioner management failed to pay the appropriate wages.

11. Though the said orders, *ex facie* is bad and deserves to be interfered with, however, taking into consideration the fact that the 1st respondent in W.P.No.29978 passed away during the pendency of the Writ



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petition and the 1st respondent in W.P. No.29979 has only one more year of service, forcing them to face trial before the Labour Court under Section 2A(2) of the Industrial Disputes Act would serve no useful purpose and further the punishment imposed on the workman for unauthorised absence is too harsh, this Court, exercising its inherent and extraordinary jurisdiction under Article 226 of the Constitution of India is inclined to modify the punishment by issuing the following directions :-

(i) For the 1st respondent in W.P.No.29978 of 2016:

Punishment of stoppage of increment for a period of two years without cumulative effect is imposed on the 1st respondent in lieu of dismissal and the 1st respondent would not be entitled for any back wages during the non-employment period, but would be entitled for continuity of service and other terminal benefits including family pension. Further, the 1st respondent would not be entitled for employer contribution to PF/pensionary fund during the non-employment period.

(ii) For the 1st respondent in W.P.No.29979 of 2016:

The petitioner management is directed to reinstate the 1st respondent back into service, if not already reinstated. However, during the period in which the 1st respondent has



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not been under the employment of the petitioner, the 1st respondent would not be entitled for any backwages. The 1st respondent shall be reinstated in service within a period of one week from the date of receipt of a copy of this order and the 1st respondent would be entitled for continuity of service for the purpose of terminal benefits including family pension. Further, the 1st respondent would not be entitled for employer contribution to PF/pensionary fund during the non-employment period.

12. These Writ petitions are disposed of with the aforesaid modification and directions. There shall be no order as to costs. Consequently, the connected Miscellaneous petitions are closed.

10.07.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

The Special Deputy Commissioner of Labour (Conciliation),
DMS Compound, Chennai.

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M.DHANDAPANI., J.

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