



WEB COPY



W.P.No.15525 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM :

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

W.P.No.15525 of 2018
and WMP.No.18430 of 2018 and 6635 of 2019

The Management
Tamil Nadu State Transport
Corporation (Salem) Limited,
12, Ramakrishna Road,
Salem-636 007.

... Petitioner

Vs.

1. T.Jambu

2. The Special Deputy Commissioner of Labour,
Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari call for the records pertaining to the order dated 03.07.2017 passed in A.P.No.21 of 2014 on the file of the second respondent and quash the same, consequently direct the second respondent to approve the order of the petitioner dated 26.02.2014 dismissing the second respondent from service.

For Petitioner : Mr.R.Babu

For Respondents : Ms.Sindhumathy
For Mr.V.Ajoy Khose R1
Mr.M.S.Prem Kumar, GA R2

ORDER



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The petition has been filed seeking to quash the order dated 03.07.2017 passed in A.P.no.21 of 2014 on the file of the second respondent and quash the same, consequently direct the second respondent to approve the order of the petitioner dated 26.02.2014 dismissing the second respondent from service.

2. It is the case of the petitioner that the first respondent was working as a driver in the petitioner corporation. He was absented from duty without leave letter from 02.03.2013 to 28.03.2013. It is against the Rule of Section 24(6)(A) of the Standing Order of the petitioner Corporation. Hence, the petitioner Corporation issued charge memo against the first respondent and conducted disciplinary proceedings. The charges were proved against the first respondent in the enquiry. Thereafter, the first respondent was dismissed from service by the petitioner Corporation. The petitioner Corporation filed petition before the second respondent for getting approval of the dismissal. The second respondent has dismissed the said petition. Against which, the present writ petition has filed by the petitioner Corporation.

3. The learned counsel for the petitioner submitted that the petitioner



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has given sufficient opportunity to the first respondent workman. However, the first respondent had not produced any proof to substantiate his claim. In such circumstances, the Labour Court has to allow the approval petition. The decision taken by the Labour court is contrary to the decision of the Hon'ble Supreme Court reported in *MANU/SC/0268/1978 in the case of Lalla Ram Vs. Management of DCM. Chemical Works Ltd., and others.*

4. The learned counsel for the first respondent submitted that admittedly the workmen entered into service in the year 1991 and subsequently, he was regularised the service and he was terminated from service in the year 2014 for his unauthorized absence. The learned counsel further submitted that on previous occasion, there is no misconduct as against the first respondent. Due to ill-health, he was not attend duty on such period. Even then, the said misconduct made by the petitioner is a condonable one, for which, termination from service is unsustainable one.

5. The learned counsel, on instructions, further submitted that the first respondent is going to retire from service in the year 2027 and he has only four years of service. The first respondent is ready to forgo the backwages from the



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date of dismissal to till the date of reinstatement of service, if the petitioner reinstates him to service. Therefore, the learned counsel prays that this Court may direct the petitioner to reinstate the first respondent in the service.

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

7. The facts of the case are not in dispute. As stated supra, the first respondent has been removed from service for his unauthorised absent in the year 2014.

8. On perusal of the award passed by the Labour Court, it is seen that due to ill health of the first respondent, he has taken leave and also the Labour Court has rightly assessed the issue after perusal of the medical report submitted by the first respondent that the petitioner Management has to give an alternate job to the first respondent. But the petitioner has terminated the first respondent from service, which is not sustainable one. However, the order of the Labour Court is in terms of the decision rendered by the Hon'ble Apex Court in the case of **Lalla Ram** as stated supra. Further the first respondent is



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going to be retired from service in the year 2027 and he has only four years of service and he has also appeared before this Court and submitted that he is ready to forgo his back wages if the petitioner reinstates him to service.

9. In view of the above, this Court is inclined to pass the following order:

"The petitioner Corporation is directed to provide an alternate employment to the first respondent within a period of four weeks from the date of receipt of a copy of this order;

2. The first respondent is entitled for continuity of service and other terminal benefits and he is not entitled for any backwages for his dismissal period."

10. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also closed. However, the 17B wages already paid to the first respondent cannot be recovered.

07.09.2023

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M.DHANDAPANI, J.



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Index : Yes / No

Speaking order / Non speaking order

Netrual Citation Case : Yes / No

To

The Special Deputy Commissioner of Labour,
Chennai.

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