



W.P.Nos.41652 & 41653 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM :

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

W.P.Nos.41652 & 41653 of 2016

and

WMP.Nos.35635 & 35636 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. K.Devadoss ...R1 in W.P.No.41652 of 2016
2. G.Venkatesan ...R1 in W.P.No.41653 of 2016
3. The Special Deputy Commissioner
of Labour (Conciliation),
DMS Compound,
Chennai. ...R2 in both W.P's.

Prayer in W.P.No.41652 of 2023: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the 2nd respondent made in A.P.No.43 of 2011 vide its order dated 02.05.2016 and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.



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Prayer in W.P.No.41653 of 2023: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the 2nd respondent made in A.P.No.147 of 2012 vide its order dated 21.03.2016 and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

In both W.P's.

For Petitioner : Mr.M.Aswin

For Respondents : Mr.S.T.Varadarajulu, for R1
: Mr.M.S.Prem Kumar, GA, for R2

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 by the petitioner corporation seeking to quash the orders of the 2nd respondent (i) dated 02.05.2016 made in A.P.No.43 of 2011 and (ii) dated 21.03.2016 made in A.P.No.147 of 2012.

3. The facts leading to filing of these cases are as follows :

(i) In so far as W.P.No.41652 of 2016 is concerned, the 1st respondent



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was working as a conductor in the petitioner corporation. He was assigned duty in a bus, which plied between Kanchipuram and Vellore. While so, it was found by the checking officials that some of the passengers were not issued with tickets though the fare was collected by the 1st respondent. On enquiry, it was further found that he was in an intoxicated condition and there were other irregularities found by the checking officials. Therefore, the petitioner corporation initiated disciplinary proceedings as against the 1st respondent and he was dismissed from service on 20.01.2011 and he was also paid one month wages by way of a cheque.

(ii) In so far as the 1st respondent in W.P.No..41653 of 2016 is concerned, he was working as a conductor in the petitioner corporation. While so, he had not reported to duty from 13.7.2010 without any prior approval or intimation. Therefore, the petitioner corporation initiated disciplinary proceedings as against the 1st respondent and he was subsequently dismissed from service, vide order dated 11.04.2012 and he was also paid one month wages by way of a cheque.

(iii) In both the cases, since bonus dispute was pending at the relevant point of time, the petitioner filed two approval petitions before the 2nd



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respondent, however, they were dismissed by the 2nd respondent, vide respective impugned orders. Challenging both the orders, the petitioner is before this Court.

4. Learned counsel for the petitioner corporation submitted that, for certain misconducts committed by the respective 1st respondent, the petitioner corporation initiated disciplinary proceedings as against them and the same ended in dismissal and parallelly, the petitioner corporation, sought approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 from the 2nd respondent. Insofar as the 1st respondent in W.P.No.41653 of 2016 is concerned, he remained absent throughout till the dismissal order was passed. While so, after contest, the 2nd respondent mechanically rejected the approval petitions filed by the petitioner by two separate orders dated 02.05.2016 and 21.03.2016 respectively, which is not sustainable. Further, it is mandatory on the part of the Labour Court that, it has to consider the approval petitions filed under Section 33(2)(b) of the ID Act, in terms of the law laid down by the Apex Court in the case of **Lalla Ram (supra)**, in which, the Apex Court has prescribed the procedure to be followed while



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deciding the approval petitions. However, contrary to the said procedure, the Labour Court has rejected the approval petitions filed by the petitioner corporation, which cannot be acceded to and accordingly, prayed for appropriate orders.

5. Learned counsel for the respective 1st respondent submitted that, though departmental proceedings were initiated as against the respective 1st respondents for certain alleged misconducts, however, the petitioner corporation had imposed the maximum 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 filed by the petitioner corporation, which does not warrant interference of this Court. However, he fairly submitted that, the respective 1st respondents are ready to forgo the back wages and contributory PF for the period from the date of dismissal till the date of retirement.

6. Heard learned counsel on either side and perused the materials



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available on record.

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7. Admittedly, for certain misconducts committed by the respective 1st respondent, the petitioner corporation passed the order of dismissal as against them, for which, the petitioner Corporation filed approval petitions before the Labour Court under Section 33(2)(b) before the 2nd respondent. 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;

(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



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industrial dispute is pending for approval of the action taken by him."

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8. Though compliance of the postulates in *Lalla Ram case* is claimed to have been fulfilled, however, taking into consideration the service rendered by the respective 1st respondent and also the fact that, they have retired from service during the pendency of these Writ petitions, forcing them to face trial before the Labour Court under Section 2A2 of the ID Act would serve no useful purpose and further, as the respective 1st respondent are ready to forgo the back wages and contributory PF for the period from the date of dismissal till the date of retirement, this Court, by exercising its inherent and extraordinary jurisdiction under Article 226 of the Constitution of India, is inclined to issue the following direction:-

The petitioner corporation is directed to settle the entire terminal benefits including family pension and other benefits to the respective 1st respondent; however, the respective 1st respondent are not entitled for back wages and contributory PF from the date of dismissal till the date of retirement, but is entitled for continuity of



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service and other benefits for the purpose of calculating gratuity and other terminal benefits.

9. With the above modifications and directions, these Writ petitions stand disposed of. There shall be no order as to costs. Consequently, the connected Miscellaneous petitions are closed.

13.07.2023

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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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