



W.P.No.16537 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.16537 of 2018

And

W.M.P.No.19722 of 2018

The Management
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Thiruvannamalai Division,
Thiruvannamalai.

... Petitioner

Vs.

1.R.Anbalagzhan

2.The Joint Commissioner of Labour,
Chennai.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari after calling for the records relating to the order dated 20.03.2017 passed in A.P.No.242 of 2013 on the file of the second respondent and quash the same as being illegal, arbitrary and unconstitutional.

For Petitioner : Mr.M.Aswin
For Respondents : Mr.S.T.Varadharajulu for R1
Mr.M.S.Prem Kumar for R2
Government Advocate



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ORDER

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The petitioner has filed this writ petition seeking issuance of Writ of Certiorari after calling for the records relating to the order dated 20.03.2017 passed in A.P.No.242 of 2013 on the file of the second respondent and quash the same as being illegal, arbitrary and unconstitutional.

2.The case of the petitioner is that the petitioner filed approval petition under Section 33 (2) (B) of the Industrial Disputes Act, 1947 before the second respondent seeking approval of the order of termination issued to the first respondent and the second respondent vide order dated 20.03.2017 rejected the approval petition. Challenging the same, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner submitted that based on the report received from the Branch Manager, Arni, that the first respondent was unauthorizedly absent from 21.10.2011 to 20.11.2011, the petitioner issued charge memo dated 05.12.2011 to the first respondent. Being not satisfied with the explanation given by the first respondent, the petitioner appointed enquiry officer to conduct enquiry and the enquiry officer conducted enquiry.



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4.The learned counsel appearing for the petitioner further submitted that during the enquiry, the Enquiry Officer issued various notices to the first respondent, however, the first respondent did not choose to appear for enquiry and hence, the enquiry officer proceeded with the enquiry exparte and submitted his report on 03.10.2012 holding the charges levelled against the first respondent as proved. Pursuant to the enquiry report, show cause notice was issued to the first respondent on 30.12.2012 and since he did not submit any reply, second show cause notice dated 25.04.2013 was issued to the first respondent and since the first respondent did not respond, order of dismissal dated 06.08.2013 was passed against the first respondent and approval petition was filed before the second respondent.

5.The learned counsel appearing for the petitioner further submitted that the second respondent rejected the approval petition on the ground that domestic enquiry was conducted exparte, however, the second respondent has to see whether enquiry was conducted in terms of the decision of the Hon'ble Apex Court reported in **AIR 1978 © 1004 (Lalla Ram Vs. Dcm chemical Works)**. In the present case fair opportunity was given to the first respondent, however, the first



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respondent did not choose to appear before the enquiry Officer. Thereafter, even after receipt of the second show cause notice, he did not submit any reply. All these facts were not properly considered by the second respondent and the second respondent mechanically rejected the approval petition, which is not sustainable one. The learned counsel further submitted that during the pendency of this writ petition, the first respondent retired from service.

6.The learned counsel appearing for the first respondent submitted that though the petitioner claim that the enquiry officer issued notice to the first respondent, the same was not substantiated before the second respondent. It is the duty cast upon the petitioner to prove that fair opportunity was given to the first respondent before issuing the order of dismissal. Further, the enquiry proceedings was not filed before the second respondent. In the absence of any evidence, the second respondent arrived at a conclusion that domestic enquiry was not conducted in the manner known to law and rejected the approval petition filed by the petitioner, which warrants no interference.



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7. Heard the arguments advanced on either side and perused the materials available on record.

8. The facts in the present case is not in dispute. Admittedly, the first respondent was working under the petitioner Corporation and based on the report received from the Branch Manager, Arni, that the first respondent was unauthorizedly absent from 21.10.2011 to 20.11.2011, the petitioner initiated disciplinary proceedings as against the first respondent and exparte enquiry was conducted and based on the enquiry report, second show cause notice was issued to the first respondent and thereafter, order of dismissal dated 06.08.2013 was passed against the first respondent and approval petition was filed before the second respondent.

9. Though the petitioner claim that the enquiry officer issued notice to the first respondent, but the first respondent did not appear before the first respondent, no document was filed by the petitioner before the second respondent to prove that fair opportunity was given to the first respondent before issuing the order of dismissal. Hence, the second respondent arrived at a conclusion that domestic enquiry



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was not conducted in the manner known to law and rejected the approval petition filed by the petitioner, which warrants no interference.

10.It appears that during the pendency of this writ petition, the first respondent retired from service. Hence, the first respondent is not entitled to backwages from the date of dismissal to the date of superannuation. However, the first respondent is entitled for continuity of service and other benefits. The petitioner is directed to settle the entire terminal benefits due to the first respondent, within a period of four weeks from the date of receipt of a copy of this order.

11.The writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

08.09.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To
1.The Joint Commissioner of Labour,
Chennai.

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