



W.P.No.24942 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.24942 of 2018
and
W.M.P.No.28988 of 2018**

The Management,
Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
37, Mettupalayam Road,
Coimbatore - 641 043.

... Petitioner

Vs.

1. K.Gurusamy,
Conductor 012141,
32, Appanrawuthar Lane,
Udumalpet - 642 126.

2. The Special Joint Commissioner of Labour,
Chennai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to the order dated 16.04.2018 passed in A.P.No.376 of 2011 on the file of the Special Joint Commissioner of Labour, Chennai, the second respondent herein and quash the same as being illegal, arbitrary and unconstitutional.



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For Petitioner : No appearance
For Respondents : Mr.V.Manisekaran for R1
Mr.M.S.Prem Kumar
Government Advocate for R2

ORDER

The impugned order dated 16.04.2018 made in A.P.No.376 of 2011 passed by the second respondent is under challenge in the present Writ Petition.

2. The petitioner is the Management (Tamil Nadu State Transport Corporation). The first respondent was working as Conductor in the petitioner Management. Due to his unauthorised absence, a charge memo was issued. An enquiry was ordered and not satisfied with the explanation submitted by the workman, enquiry notice was issued to participate in the enquiry proceedings which was returned with an endorsement 'door locked'. Thereafter, the paper publication was caused regarding the domestic enquiry. Even thereafter, the first respondent / workman did not choose to appear before the Enquiry Officer. Therefore, the Enquiry Officer has submitted a



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enquiry report dated 28.08.2010 holding that the charges levelled against the workman are proved. Pursuant to the enquiry report, a show cause notice was issued to the first respondent. Since no explanation was received, the second show cause notice was issued on 16.07.2011 which was also published in the newspaper. Even then, the first respondent / workman had neither submitted any explanation nor reported duty. Therefore, the petitioner Management by considering the relevant report and other documents had issued an order of dismissal of the first respondent / workman dated 15.09.2011 appending a cheque for a sum of Rs.18,831/- being one month salary. Pursuant to the dismissal order dated 15.09.2011, the petitioner Management has filed an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 wherein the first respondent herein had filed counter affidavit stating that the enquiry has not been conducted in a just and proper manner and that the punishment imposed was disproportionate to the charges levelled against him.



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3. The second respondent / Special Joint Commissioner of Labour after considering the materials placed on behalf of the Management as well as the workman dismissed the Approval Petition in A.P.No.376 of 2011 vide order dated 16.04.2018. Challenging the said order dated 16.04.2018, the present Writ Petition has been filed by the petitioner Management

4. Today when the matter is taken up for hearing, there is no representation on behalf of the petitioner Management.

5. The learned counsel appearing for the first respondent / workman contended that the first respondent was engaged as Conductor in the petitioner Management since 1985 and he had availed leave for ten days from 11.11.2008. However, he was issued with the enquiry notice dated 06.12.2008 to his old address and hence it could not be sent on him. He further submits that the enquiry was not conducted in a fair and proper manner as he was not given any opportunity to explain as to what transpired and that he did not receive any of the notices sent by the petitioner



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Management in view of the wrong address to which it was sent. That apart, he further submits that, the Enquiry Officer without even conducting an enquiry has submitted the enquiry report ex-parte and the same is evident in the enquiry report dated 06.12.2010. Therefore, the second respondent after considering the entire facts and circumstances of the case has held that the enquiry was not conducted as per the guidelines laid down in the case of ***Lalla Ram vs. D.C.M.Chemical Works Ltd., and another*** reported in ***(1978) 3 SCC 1*** and has rightly dismissed the Approval Petition. Accordingly, the learned counsel for the first respondent seeks for dismissal of the Writ Petition.

6. After carefully considering the materials placed on record and the orders passed by the second respondent that the enquiry notice was issued to the first respondent on 29.12.2009, thereafter the first show cause notice was issued to him on 09.11.2010 and the second show cause notice was issued on 16.07.2011. Based on the enquiry report, the petitioner Management has passed an order of dismissal dated 15.09.2011. The



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petitioner Management has passed an order of dismissal on one hand and simultaneously on the other hand has filed the Approval Petition before the second respondent. This instantaneous filing of the Approval Petition was disapproved by the second respondent and it was discussed in detail in the impugned award. That apart, the enquiry seems to have been conducted without giving opportunity to the first respondent / workman which is against the principles laid down in the ***Lalla Ram's case supra***. Moreover, the enquiry proceedings has not been marked as exhibits before the second respondent which fact was also discussed by the second respondent in the award. It is evident from the enquiry findings before this Court that the enquiry was conducted exparte and the enquiry proceedings was not filed before the second respondent. Therefore, this Court is of the clear view that the first respondent / workman was not given any opportunity of hearing before passing the order of dismissal and this violates the guidelines laid down in ***Lalla Ram's case supra***, accordingly, the second respondent was right in passing the impugned award. Therefore, this Court do not find any error in the order passed by the second respondent.



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7. Accordingly, this Writ Petition is dismissed in the above terms.

No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

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