



WEB COPY



WP.No.24968 of 2018

In the High Court of Judicature at Madras

Dated : 22.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

W.P.No.24968 of 2018
and
W.M.P.No.29013 of 2018

The Management,
Tamil Nadu State Transport Corporation Salem Limited,
12, Ramakrishna Road, Salem – 7. ... Petitioner

Vs

A.Rajendran ... Respondent

Prayer: Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the order dated 12.09.2017 passed by The Special Deputy Commissioner of Labour in A.P.No.308 / 2014 and to quash the same.

For Petitioner : Mr.R.Babu
for M/s.S.Rajeni Ramadass
For Respondent : Died



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ORDER

WEB COPY This petition is filed seeking to quash the order dated 12.09.2017 passed by The Special Deputy Commissioner of Labour in A.P.No.308 of 2014.

2. The respondent was working as a Conductor at Omalur Branch of Tamil Nadu State Transport Corporation (TNSTC). Since he remained continuously and unauthorisedly absent from 15.05.2013 without any prior permission or leave application, he was given a charge memo by the petitioner management. Though several enquiries were conducted by the Corporation, however the respondent failed to appear before the enquiry officer. While so, the respondent was set *ex-parte* and an order of dismissal dated 30.11.2014 was passed by the petitioner management. When the petitioner management has made an application before the Special Deputy Commissioner of Labour, Chennai in A.P.No.308 of 2014, seeking to approve the said dismissal, the said application was rejected vide order dated 12.09.2017. Challenging the same, the present writ petition has been filed.



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3. The learned counsel for the petitioner submits that during the pendency of the writ petition the respondent workman died. He further submits that though several notices were sent to the respondent to appear before the enquiry officer, the respondent failed to appear before the enquiry officer, hence an order of dismissal was passed. However, when the said order of dismissal was submitted before the Special Deputy Commissioner of Labour, Chennai seeking approval, the said application was rejected without appreciating the principles laid down in ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***. Hence, he prayed to allow this writ petition.

4. Heard the learned counsel for the petitioner and perused the materials placed on record.

5. Admittedly, the respondent workman entered the services of the petitioner management during the year 1992 and for certain misconduct committed by him, the respondent workman was dismissed from service by



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the petitioner management and pursuant to which, the petitioner filed approval petition before the Labour Commissioner, who in turn passed the present impugned order, dismissing the approval petition filed by the petitioner.

6. Though it is the claim of the petitioner management that they sent several notices to the respondent, the respondent has not chosen to appear before the enquiry officer and therefore, the *ex-parte* proven minute was drawn as against the respondent and he was subsequently dismissed from service, however, a perusal of the records, particularly the impugned order reveals that, no opportunity was given to the respondent to prove his case and the same is evident from the documents marked before the Labour Commissioner i.e., Exs.R9, P3, P5, P7, P9, P12, P14 and P17, the RPAD cards, from which it can be seen that all the summons were returned as 'unclaimed' and if it is so, it is the duty of the petitioner management to effect service through paper publication intimating the disciplinary proceedings and summons to the respondent. However, without doing so, the petitioner management has drawn *ex-parte* proven minute and filed



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approval petition before the Labour Commissioner and it is evident that no opportunity was given to the respondent prior to order of dismissal.

7. Further, though the petitioner management claim that they have paid the one month salary to the respondent by way of demand draft and the same was marked as Ex.P.19, when the respondent specifically denied the receipt of the enquiry proceedings and the payment of one month salary through demand draft, it is the responsibility of the petitioner management to taken effective steps to prove that one month salary as mandated under Section 33(2)B of the I.D. Act was paid to the respondent. All those facts were not properly established before the Labour Court. Hence, the Labour Court, after careful consideration, had rightly arrived at a conclusion that neither the procedure contemplated under Section 33(2)B of the I.D. Act nor the law laid down by the Apex Court in *Lalla Ram's case* has been complied with, in which, this Court does not finds any fault with. Hence, the prayer sought in this writ petition cannot be granted.



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8. It appears that during the pendency of this writ petition, the respondent passed away and there is no specific averment whether the respondent workman is gainfully employed during the non-employment period or not. Further, it is pertinent to note that, the respondent workman reached the age of superannuation and he subsequently died during the pendency of this Writ petition. Hence, forcing the legal heirs to face trial will cause much more agony to them.

9. In view of the above, this Court directs the petitioner management to calculate the entire terminal benefits including the pensionary benefits payable to the respondent workman and disburse the same to his legal heirs within a period of four weeks from the date of receipt of a copy of this order. It is made clear that, the respondent is not entitled for any backwages from the date of dismissal till the date of superannuation, however, he is entitled for continuity of service.



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WEB COPY 10. With the above direction, this writ petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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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,
Chennai.



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