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WP.No.6339 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P No.6339 of 2016

& WMP.No.5648 of 2016

The Management, Tamil Nadu
State Express Transport
Corporation, Pallavan Salai,
Chennai-2 rep.by its
Managing Director

...Petitioner

Vs

1.T.Ramachandran

2.The Special Joint Commissioner
of Labour, DMS Compound,
Chennai.

...Respondents

PETITION under Article 226 of The Constitution of India praying for
the issuance of a Writ of Certiorari to call for the records of the order passed
by the second respondent in Approval Petition in A.P.No. 144/2011 dated
29.4.2013 and quash the same.

For Petitioner	:	Mr.K.Kathiresan
For Respondent-1	:	No appearance
For Respondent-2	:	Mr.V.Ravi, SGP



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ORDER

This is a petition filed by the petitioner seeking to quash the order dated 29.4.2013 in A.P.No.144 of 2011 on the file of the second respondent.

2. Though the first respondent was served and his name printed in the cause list, none appears for the first respondent nor the first respondent is present in court today when the case is called. However, considering the pendency of this Writ Petition which is of the year 2016, this Court is inclined to take up the case and dispose of the Writ Petition based on merits on the basis of materials available on record.

3. The facts leading to filing of this case are as follows :

(i) The first respondent was working as a daily paid driver/ conductor in the petitioner management. The Branch Manager concerned reported on 17.2.2009 that the first respondent was unauthorizedly absent from 21.11.2008 continuously without any permission or sanction of leave. A charge memo was issued on 18.2.2009, for which, the first respondent sent a reply on 10.3.2009. As the petitioner management was not convinced with



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the reply sent by the first respondent, an enquiry was conducted. The Enquiry Officer, after conducting the enquiry, concluded that the charges were proved.

(ii) Based on the report of the Enquiry Officer, the petitioner sent the second show cause notice dated 06.1.2011 calling upon the first respondent to submit his explanation. Pursuant to that, the first respondent also submitted his explanation. Not satisfied with that, by order dated 24.5.2011, the petitioner management proceeded to dismiss the first respondent from the services. As there was an industrial dispute pending at conciliation stage, the petitioner management filed an approval petition in A.P.No.144 of 2011 before the second respondent. Ultimately, after contest, the second respondent rejected the approval petition by the impugned order on the ground that there were no details as to the manner of conducting the enquiry and that the details of the charge and the materials did not constitute a prima facie proof of the charges. Challenging the same, the petitioner management is before this Court.



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4. When the matter came up for admission on 22.2.2016, this Court granted an order of interim stay in WMP.No.5648 of 2016.

5. Learned counsel for the petitioner management would submit that the approval petition filed under Section 33(2)(b) of the Industrial Disputes Act has been rejected by the 2nd respondent contrary to the ratio laid down by the Hon'ble Apex Court in case of ***Lalla Ram Vs. Management of D.C.M Chemical Works Ltd and Ors*** in Civil Appeal No.351 of 1971 dated 16.02.1978 in which, the Apex Court has prescribed the procedure to be followed while deciding the approval petition. However, contrary to the said procedure, the 2nd respondent has rejected the approval petition filed by the petitioner Corporation.

6. Admittedly, the petitioner management has dismissed the 1st respondent/workman for unauthorizedly absenting himself from duty, for which, the petitioner management filed an approval petition under Section 33(2)(b) before the 2nd respondent/Labour Court. It is an undisputed fact



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

7. In the present case, a perusal of the records reveal that all the above aspects have been elaborately considered by the 2nd respondent while rejecting the approval petition filed by the petitioner Management. It



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is evident from the materials available on record that, the enquiry was not conducted in accordance with law, which was the reason for rejection of the approval sought for. Further, there is also no material to substantiate the compliance of payment of one month's salary. There being non-compliance of the provisions, the order passed by the 2nd respondent does not suffer any vice of illegality and the rejection of the approval petition is fully justified which cannot be interfered with.

8. For the reasons aforesaid, this Writ Petition is devoid on merits and the same stands dismissed accordingly. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

17.08.2023

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

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To

The Special Joint Commissioner of
Labour, DMS Compound, Chennai.



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