



W.P.No.19412 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19412 of 2023

and W.M.P.No.18686 of 2023

The General Manager
Tamil Nadu State Transport Corporation
Villupuram Ltd. Villupuram Region
Vellore-632 009.

.. Petitioner

Vs.

1.J.Raju

2. The Special Joint Commissioner of Labour
D.M.S Compound
Chennai

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other Writ, order or direction for call for the records of the 2nd respondent made in A.P.No.46 of 2021 dated 30.08.2022 and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For petitioner

: Mr. R.Venkatesa Perumal



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ORDER

This Writ Petition has been filed assailing the impugned order of the 2nd respondent in A.P.No.46 of 2021.

2. It is the case of the petitioner that the 1st respondent who was working as a conductor in the petitioner corporation. Due to his unauthorized work for 08.08.2017 to 15.09.2017, a charge memo was issued to the 1st respondent. After conducting departmental enquiry, the 1st respondent was dismissed from services vide order dated 20.01.2021. Subsequently, the petitioner corporation made an Application in A.P.No.46 of 2021 under Section 33(2)(b) of the Industrial Disputes Act, 1947 for approval of dismissal which was rejected by the 2nd respondent. Challenging the same, the petitioner has come up with this Writ Petition.

3. Learned counsel for the petitioner submitted 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



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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.

4. Per Contra, learned counsel for the 2nd respondent/Workman submitted that though the petitioner corporation claims to have conducted departmental enquiry, prior to the dismissal of the 2nd respondent from service on 20.01.2021, however, no opportunity of personal hearing was given to the 2nd respondent. Further, the enquiry report was not placed before the 2nd respondent in order to ascertain the fairness of the enquiry. Though the petitioner claims to have paid the one month salary to the 2nd respondent, however, no materials were placed before the 2nd respondent as to the payment of one month salary to substantiate their claim.

5. This Court heard the learned counsel appearing on either side and perused the materials available on record.



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6. Admittedly, the petitioner Corporation has passed the order of dismissal as against 1st respondent/workman on the ground of unauthorized absence from duty, for which, the petitioner Corporation filed an approval petition 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 industrial dispute is pending for approval of the action taken by him."



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7. In the present case, a perusal of the records reveal that all the above aspects have been elaborately considered by the 1st respondent while rejecting the approval petition filed by the petitioner Corporation. It 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 materials to substantiate the compliance of payment of one month's salary. In the above backdrop, 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.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No

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M.DHANDAPANI, J.

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To

The Special Joint Commissioner of Labour
D.M.S Compound
Chennai

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