



W.P.No.21711 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21711 of 2023

And

W.M.P.No.21076 of 2023

The Management
Tamilnadu State Transport
Corporation (VPM) Limited,
Cuddalore Region,
Cuddalore.

... Petitioner

Vs.

1.N.Arivazhagan

2.The Special Joint Commissioner of Labour,
D.M.S. Campus,
Chennai – 6.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the order passed by the second respondent, the Special Joint Commissioner for Labour, Chennai, dated 20.06.2022 made in A.P.No.141 of 2019 and quash the same.

For Petitioner : Mr.M.Aswin
For Respondents : Mr.V.Ajoy Khose 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 to call for the records relating to the order passed by the second respondent, the Special Joint Commissioner for Labour, Chennai, dated 20.06.2022 made in A.P.No.141 of 2019 and to quash the same.

2.The case of the petitioner is that the first respondent joined as Conductor under the petitioner on 09.04.2008. On 01.06.2019 when the first respondent was in service, he was found to have been involved in misappropriation by collecting fare to the cost of the ticket and have not issued ticket; there was deficiency in the bag compared to actual collection. Therefore, the petitioner issued charge memo dated 14.06.2019 to the first respondent and conducted enquiry. Since the Enquiry Officer drawn proven minute as against the first respondent, he was dismissed from service vide order dated 31.10.2019.

3.The further case of the petitioner is that thereafter, the petitioner filed approval petition under Section 33 (2) (b) of the Industrial Disputes Act before the second respondent, however, the



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second respondent rejected the approval petition. Challenging the same, the petitioner has filed this writ petition.

4.The learned counsel appearing for the petitioner submitted that the approval petition was rejected by the second respondent mainly on the ground that enquiry was not conducted as per the standing order of the petitioner Corporation and in the printed form, however, each and every fair opportunity was given to the first respondent and the first respondent without availing the opportunity, accepted guilt, thereby, the Enquiry Officer drawn proven minute as against the first respondent and hence he was dismissed from service.

5.The learned counsel appearing for the first respondent submitted that the petitioner marked the Enquiry proceedings dated 12.08.2019 and enquiry findings dated 17.08.2019 as Ex.P5 and Ex.P6 before the second respondent inorder to prove that the first respondent was dismissed from service only after providing opportunity, however, the second respondent rightly considered the same and arrived at a conclusion that enquiry was not conducted as per the procedure contemplated under Section 33 (2) (b) of the Industrial Disputes Act and as per the decision of the Hon'ble Apex



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Court reported in AIR 1978 © 1004 (Lalla Ram Vs. Dcm chemical Works) and thereafter rightly rejected the approval petition.

6.The learned counsel appearing for the first respondent further submitted that the first respondent is ready to forgo the backwages, if the petitioner reinstates him in service.

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 the first respondent was working as Conductor under the petitioner. On 01.06.2019 when the first respondent was in service, he was found to have been involved in misappropriation by collecting fare to the cost of the ticket and have not issued ticket; there was deficiency in the bag compared to actual collection. Therefore, the petitioner issued charge memo dated 14.06.2019 to the first respondent and conducted enquiry. Since the Enquiry Officer drawn proven minute as against the first respondent, he was dismissed from service vide order dated 31.10.2019. Thereafter, the petitioner filed approval petition under



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Section 33 (2) (b) of the Industrial Disputes Act before the second respondent, however, the second respondent rejected the approval petition.

9.Perusal of records disclose that the petitioner issued charge memo dated 14.06.2019 to the first respondent and the first respondent submitted his explanation on 12.08.2019. On the same day, enquiry has been conducted and the Enquiry Officer drawn proven minute within five days. Further, the enquiry proceedings is in printed format with columns ஒப்புதல் and மறுப்பு and மறுப்பு was striked and ஒப்புதல் was ticked and this itself shows that enquiry was not conducted properly as contemplated under Section 33 (2) (b) of the Industrial Disputes Act and as per the decision of the Hon'ble Apex Court reported in AIR 1978 © 1004 (Lalla Ram Vs. Dcm chemical Works).

10.Since the first respondent is ready to forgo the backwages, if the petitioner reinstates him in service, this Court directs the petitioner to reinstate the first respondent and extend all the benefits except backwages, within a period of four weeks from the date of receipt of a copy of this order. If the petitioner does not reinstate the first



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respondent, the petitioner shall pay backwages from the date of termination to till date.

11.With the above observations and directions, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Special Joint Commissioner of Labour,
D.M.S. Campus,
Chennai – 6.



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M.DHANDAPANI,J.
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