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W.P.No.28288 of 2019 & W.M.P. Nos.27964 of 2019 & 9094 & 9095 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.Nos.28288 of 2019 &
W.M.P. Nos.27964 of 2019 & 9094 & 9095 of 2022

The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Vellore Region, Vellore 9

... Petitioner

Vs.

1. J. Mahadevan
2. Special Joint |Commissioner of Labour
D.M.S. Compound,
Chennai

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the orders dated 25.10.2018 passed by the 2nd respondent in A.P. No.26 of 2014 and to quash the same.

For Petitioner	:	Mr.M. Aswin
For R1	:	Mr.V. Ajoy Khose
For R2	:	Ms.P.Vijayadevi
		Government Advocate



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ORDER

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The Writ Petitioner is the Tamil Nadu State Transport Corporation (Villupuram) Limited represented by its Management. The 1st respondent was working as a driver in the petitioner Corporation and he unauthorisedly absented himself from attending duty from 29.12.2007 to 17.10.2011. Therefore, a charge memo dated 24.12.2011 was issued to him and after getting his explanation, a Departmental Enquiry was conducted. The Enquiry Officer submitted his Enquiry Report dated 05.01.2013 holding that the charges framed against the 1st respondent as proved. The Disciplinary Authority after issuing the second show cause notice, dismissed the 1st respondent from service with effect from 27.02.2014. Thereafter, the petitioner Management filed a petition in A.P. No.26 of 2014 before the 2nd respondent for approval under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "ID Act"). The 2nd respondent, vide her orders dated 25.10.2018 dismissed the Approval Petition on the ground that the same was filed with a delay of four days. Aggrieved by the said orders, the present Writ Petition is filed.



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2. Mr.M. Aswin, learned counsel for the Writ Petitioner would contend that the 1st respondent was dismissed from service on 27.02.2014 and that since 01.03.2014 and 02.03.2014 happened to be Saturday and Sunday there was only a delay of two days in filing the Approval Petition and it cannot be stated that there is an abnormal delay.

3. Per contra, Mr.V. Ajoy Khose, learned counsel for the 1st respondent would contend that the 2nd respondent was right in dismissing the Approval Petition since the same was not filed simultaneously with the order of dismissal passed by the petitioner Management. It is also his contention that the petitioner Management dismissed the 1st respondent from service illegally on the verge of his retirement only in order to curtail his terminal benefits and pension. He therefore, prayed for dismissal of the present Writ Petition.

4. Section 33(2)(b) of the Industrial Disputes Act, 1947, reads thus:

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been



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paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958, which reads thus:

64. Application to the Conciliation Officer, Board, Labour Court or Industrial Tribunal under Section 33. --

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 33 shall present an application in Form "T" in duplicate to such Conciliation Officer, Board, Labour Court or Tribunal either personally or by registered post with acknowledgment due. A copy of it shall also be served simultaneously either personally or by registered post acknowledgment due on the workman or workmen concerned and the fact indicated on the copies of the application presented to the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be."

Thus it is seen that no time limit is prescribed under Section 33(2)(b) of the ID Act and Rule 64(2) of the Tamil Nadu Industrial Disputes Rules,



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1958. In the instant case, the petitioner had continuously absented

himself for four years without any proper intimation and this aspect has not been taken into account by the 2nd respondent. It is pertinent to point out that the 1st respondent was working as a driver in the Tamil Nadu State Transport Corporation (Villupuram) Limited, which comes under Essential Service. It is also seen from the records that the 1st respondent on five previous occasions had absented himself for which he was given punishment. Thus it is seen that the 1st respondent is habitually absenting himself from attending duty and this serious aspect has not been taken into account by the 2nd respondent. A Division Bench of this Court in the decision in ***V.Duraisamy vs. The Management, Tamil Nadu State Transport Corporation (Coimbatore Division-1) Limited and another (W.A. No.2814 of 2012)*** had observed thus:

....Finally, he was put to face enquiry before the domestic enquiry officer, who has given a finding that the appellant was found guilty of charges. Therefore, the Management passed an order of dismissal from service on 19.11.2003 and thereafter, with the delay of 13 days, they moved an Approval Petition before the second respondent seeking approval of the order of dismissal. The reasons given by the second respondent, refusing to accept the Approval Petition, are extracted as under:



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'1.The Applicant had not come to a bonafide conclusion that the Opposite Party was guilty of the charges framed against him.

2.The Applicant had not applied to this Authority for the approval of the dismissal of the Opposite Party either simultaneously or within such reasonably short time as to form part of the same transaction.-

6.We are not impressed by the reasons given by him. When the appellant had driven the vehicle on 05.11.2002, he should have attempted to stop the vehicle, but he has not done so. Due to the same, the poor pedestrian became victim and thereafter, the cyclist and the pillion rider also became victims. It cannot be disputed that multiple death of three persons was caused by careless and rash driving of the driver of the bus. Therefore, without waiting for the Award from the Tribunal, the Management has rightly proceeded with the departmental enquiry and ultimately, dismissed the appellant from service by order dated 19.11.2003 finding him guilty of charges. But, the second respondent without considering the above aspects, has refused to accord approval for the dismissal of the appellant. However, the learned Single Judge holding that all the essential requisites of the proviso to Section 33(2)(b) of the Act are complied with by the Management, has rightly set aside the order passed by the second respondent and allowed the writ petition filed by the Management and granted the order of approval. Therefore, we are not inclined to interfere with the



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order passed by the learned Single Judge. For the above reasons, this writ appeal stands dismissed.

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5. In the instant case, as already observed, there is a delay of only two days and the 2nd respondent had dismissed the Approval Petition only on the ground of delay in filing the Approval Petition. In the circumstances, I hold that the order passed by the 2nd respondent in refusing to grant approval is totally perverse and the same is liable to be set aside.

6. In the result, the Writ Petition is allowed. No Costs. Consequently connected Writ Miscellaneous Petitions are closed.

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bga
Index : yes/no
Speaking /Non speaking Order

To

Special Joint |Commissioner of Labour



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R.HEMALATHA, J.

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