



W.P.No.38117 of 2016

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.38117 of 2016

and

WMP.No.32671 of 2016

The Management,  
Tamilnadu State Transport Corporation Coimbatore Ltd.,  
37, Mettupalayam Road, Coimbatore.

...Petitioner

Vs.

1. M.Sakthivel

2. The Special Deputy Commissioner of Labour (Conciliation),  
DMS Compound, Chennai.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the order passed by the 2<sup>nd</sup> respondent in A.P.No.111/2013 dated 12.05.2016 and quash the same.

For Petitioner : Mr.A.Sundaravadanam

For Respondents : Mr.V.Ajoy Khose, for R1



W.P.No.38117 of 2016

## **ORDER**

**WEB COPY** This Writ petition has been filed seeking quashment of the order of the 2<sup>nd</sup> respondent dated 12.05.2016 made in A.P.No.111 of 2013.

2. The case of the petitioner is that, the 1<sup>st</sup> respondent was appointed as a conductor in the petitioner corporation and he was working in the Sungam-2 Depot. While so, without obtaining prior permission, the 1<sup>st</sup> respondent absented himself unauthorizedly from duty and that too, even till the date of dismissal i.e.,08.02.2013. Thereby, a charge memo dated 09.03.2011 came to be issued, and pursuant to appointment of the Enquiry Officer, an inquiry was conducted, even to which, the 1<sup>st</sup> respondent did not turn up and appeared for enquiry only on 11.10.2011 and he did not take any earnest efforts to examine any witness and he did not appear for the enquiry held on subsequent dates and therefore, he was set ex parte and as the charges levelled against the 1<sup>st</sup> respondent were proved, the petitioner corporation passed the order of dismissal on 08.02.2013. Thereafter, the petitioner corporation filed the approval petition under Section 33(2)(b) of the Industrial Disputes Act, before the 2<sup>nd</sup> respondent and the same was taken up on file in A.P.No.111 of 2013, in which, the present impugned



W.P.No.38117 of 2016

order came to be passed, refusing to grant approval to the petitioner corporation. Challenging the same, the petitioner corporation is before this Court.

3. Learned counsel for the petitioner submitted that, for unauthorized absence, the 1<sup>st</sup> respondent was dismissed from service on 08.02.2013 and he was paid with one month salary as per the requisite mandate under Section 33(2)(b) of the ID Act. Simultaneously, the petitioner corporation filed approval petition before the 2<sup>nd</sup> respondent, seeking approval of the dismissal of the 1<sup>st</sup> respondent. Though, the petitioner corporation satisfied all the procedures contemplated as per the decision of the Hon'ble Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.***, the 2<sup>nd</sup> respondent refused to grant approval solely on the ground that, the punishment imposed for the misconduct committed by the 1<sup>st</sup> respondent is too harsh. However, the fact remains that, while dealing with the approval petition filed under Section 33(2)(b) of the ID Act, the 2<sup>nd</sup> respondent, has no such power to modify or question the punishment imposed by the petitioner corporation, unless the respective dismissal order is challenged in the manner known to law and the observation made by the



W.P.No.38117 of 2016

2<sup>nd</sup> respondent in the respective impugned order cannot be sustained. Hence, he prayed for appropriate orders.

4. Learned counsel appearing for the 1<sup>st</sup> respondent submitted that, though departmental proceedings were initiated as against the 1<sup>st</sup> respondent for unauthorised absence, however, for mere unauthorised absence, the petitioner corporation had imposed the maximum punishment of dismissal from service, which is highly disproportionate and the 2<sup>nd</sup> respondent, after considering all the above said facts, passed the present impugned order rejecting the approval petition, which does not warrant interference of this Court. However, he fairly submitted that, the 1<sup>st</sup> respondent retired from service as early as on 28.02.2022 and accordingly, he prayed for appropriate orders.

5. Heard learned counsel on either side and perused the materials available on record.

6. Admittedly, for unauthorized absence, the petitioner Corporation has passed the order of dismissal as against the 1<sup>st</sup> respondent, and for approval of the same, the petitioner Corporation filed approval petition before the 2<sup>nd</sup> respondent under Section 33(2)(b) of the ID Act. 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."*

7. In the present cases, though the petitioner corporation passed the order of dismissal as per the procedure contemplated in *Lalla Ram case*, the



W.P.No.38117 of 2016

2<sup>nd</sup> respondent rejected the approval petition on the ground that, for mere unauthorized absence, imposing a maximum punishment of dismissal from service is too harsh.

8. Though compliance of the postulates in *Lalla Ram case* is claimed to have been fulfilled, however, taking into consideration the service rendered by the 1<sup>st</sup> respondent and also the fact that, he retired from service as early as on 28.02.2022, forcing him to face trial before the Labour Court under Section 2A2 of the ID Act would serve no useful purpose and further the punishment imposed on the workman for unauthorised absence is too harsh, this Court, exercising its inherent and extraordinary jurisdiction under Article 226 of the Constitution of India is inclined to issue the following direction:-

The petitioner corporation is directed to settle the entire terminal benefits including family pension and other benefits to the 1<sup>st</sup> respondent; however, the 1<sup>st</sup> respondent is not entitled for back wages from the date of dismissal till the date of retirement, but is entitled for continuity of service and other benefits for the purpose of calculating gratuity and other terminal benefits.



W.P.No.38117 of 2016

**WEB COPY** 9. With the above modifications and directions, this Writ petition stands dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous petition is closed.

**13.07.2023**

skt

NCC : Yes / No  
Speaking Order : Yes / No  
Index : Yes / No

To

The Special Deputy Commissioner of Labour (Conciliation),  
DMS Compound,  
Chennai.

**M.DHANDAPANI., J.**

7/8



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W.P.No.38117 of 2016

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W.P.No.38117 of 2016  
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