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W.P.No.11457 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM :

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

W.P.No.11457 of 2017
and WMP.No.12438 of 2017

The Tamil Nadu State
Transport Corporation (Villupuram) Ltd.,
Vazhuthareddy, Salamedu,
Villupuram Region,
Villupuram 605 602.

... Petitioner

Vs.

1. V.Balasubramanian

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

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the 2nd respondent made in A.P. No. 4/2014 dated 21.6.2016 and to quash the same as illegal and against the provisions of the Industrial Disputes Act 1947.

For Petitioner : Mr.G.Saravanakumar

For Respondents : Mr.M.S.Premkumar, GA R2

ORDER

The petition has been filed seeking to quash the order passed by the 2nd respondent made in A.P. No. 4/2014 dated 21.6.2016.



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2. It is the case of the petitioner that the first respondent was working as Driver in the petitioner Corporation. He has attached to the Tindivanam Depot and his service number is DR.4366. The first respondent entered into service in the year 2005 and regularised service in the year 2006. For the unauthorised absence of the first respondent, he was issued charge memo on 25.02.2023. After conducting the same, he was dismissed from service on 22.01.2014. Thereafter, the petitioner filed approval petition under Section 33(2)(B) of the ID Act and the same was rejected. Challenging the said rejection order, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the petitioner has given sufficient opportunity to the first respondent workmen. The first respondent has not forwarded his illness report to the petitioner. On the sole ground, the second respondent approval authority rejected the approval petition. The said decision is contrary to the decision of the Hon'ble Supreme Court reported in *MANU/SC/0268/1978 in the case of Lalla Ram Vs. Management of DCM. Chemical Works Ltd., and others.*



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4. The learned counsel for the first respondent submitted that admittedly the workmen entered into service in the year 2005 and regularised the service in the year 2006 and he was terminated from service in the year 2014 for his absence. After lapse of more than two decades, the Management has filed the approval petition. The learned counsel further submitted that on previous occasion, there is no misconduct as against the first respondent. Due to ill-health, he was not attend duty on such period. Thereby, the first respondent was dismissed from service on 22.01.2014. Even then, the said misconduct made by the petitioner is a condonable one, for which, termination from service is unsustainable one. Further, the first respondent has retired from service on 30.04.2019. The learned counsel on instructions further submitted that the first respondent is ready to receive the backwages from 2014 to 2019 and this Court may extend the benefit for continuity of service.

5. Heard the learned counsel for the petitioner and the learned Counsel for the first respondent and perused the materials available on record.

6. The facts of the case are not in dispute. The first respondent has been removed from service for his unauthorised absent in the year 2014. On perusal



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of the award passed by the Labour Court, there is no fault with the enquiry conducted by the Management, but they have not filed the approval petition within the reasonable period and the first respondent's medical report has not been forwarded to the medical board and hence, the same was also rejected. Thereby, the order of the Labour Court is in terms of the decision rendered by the Hon'ble Apex Court as stated supra. Further the first respondent has retired from service in the year 2019 and there is no question for reinstatement.

7. In view of the above, this Court is inclined to pass the following order:

"1. The petitioner Corporation is directed to settle the entire terminal benefits to the first respondent without any backwages within a period of four weeks from the date of receipt of a copy of this order;

2. The first respondent is not entitled for continuity of service."

8. With the above directions, the writ petition is disposed of. No costs.

20.07.2023

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Index : Yes / No
Speaking order / Non speaking order
Netrual Citation Case : Yes / No

To

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