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W.P. No.25331 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**W.P. No.25331 of 2017
and W.M.P. No.26793 of 2017**

The General Manager
Tamil Nadu State Transport Corporation
(CBE) Ltd.
Erode Region, Chennimalai Road
Erode.

... Petitioner

-VS-

1.C.Jayakumar

2.The Special Deputy Commissioner of Labour
D.M.S. Compound
Chennai-600006.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records of the second respondent made in A.P.No.44 /2014 dated 27.03.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.M.V.Muralivinoth
For Respondents : Mrs.S.Girija (R1)
Mr.M.S.Prem Kumar, GA (R2)

ORDER

This petition has been filed seeking to quash the order passed by the respondent made in A.P.No.44 /2014 dated 27.03.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.



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2. It is the case of the petitioner that the first respondent was working as a conductor with the petitioner Management. The first respondent was unauthorized absent from 29.03.2012 till the date of 09.04.2012. Due to which, a show cause notice was issued to the first respondent and he has submitted his reply. The petitioner Management appointed an enquiry officer and the first respondent has also attend the enquiry and charges were proved. The enquiry officer, after going through the evidence adduced and documents marked on behalf of the petitioner Management, submitted the report dated 28.09.2012 stated that the first respondent was guilty of the charges. Therefore, the first respondent was terminated from the service by the petitioner Management. In view of the same, the petitioner has filed approval petition before the Labour Court seeking approval for the dismissal of the first respondent under Section 33(2) (b) of the ID Act, 1947 and the same was taken up for hearing by the second respondent in A.P.No.44 of 2014. The Labour Court observed that there is no prima facie case for granting approval and rejected the approval petition vide order dated 27.03.2017. Challenging the said 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 workman and the petitioner



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Management has established the charge against the first respondent before the Labour Court. After issuing show cause notice, the first respondent was dismissed from service. The petitioner has rightly dismissed the first respondent from service, however, 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.*

4. The learned counsel for the first respondent submitted that admittedly the workman entered into service in the year 1997 and subsequently, he dismissed from service in the year 2007. Due to illness, he could not attend the duty and the first respondent has forwarded the medical report to the Branch Manager. The enquiry officer has not properly considered the issue. However, the second respondent has appreciated the evidence let in by the first respondent and rightly rejected the approval petition, which need not be any interference.

5. The learned counsel for the first respondent, on instructions, submitted that he is ready to forgo the backwages from the date of dismissal till date of superannuation. Therefore, this Court may issue a direction to the petitioner Corporation to settle the other terminal benefits with continuity of service to the



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first respondent as expeditiously as possible.

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

7. The facts of the case are not in dispute. Admittedly, the first respondent was working as a conductor in the petitioner management and due to illness, he could not attend the duty and the same was properly explained by him during enquiry. It is the grievance of the petitioner that the first respondent has been removed from service for his unauthorised absent. For unauthorized absent, dismissed from service is objectionable.

8. Though the second respondent has rejected the approval petition on the ground that the petitioner has dismissed the first respondent from service not in terms of the decision rendered by the Hon'ble Apex Court as stated supra. On perusal of the impugned order, it is seen that the first respondent has produced the medical records before EO. Without considering the records, the EO drawn a proven minute, which itself shows that there is no prima facie available for dismissal of service. Further one month salary was not paid to the first respondent. However, when the matter is taken for hearing, the learned counsel



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on instructions submitted that the first respondent is agreed to forgo the backwages.

9. Considering the facts and circumstances of the case and considering the gravity of the offence and the punishment imposed by the petitioner, this Court directs the petitioner to settle the entire benefits to the first respondent without any back wages from date of dismissal to till the date of superannuation within a period of six weeks from the date of receipt of a copy of this order and whatever the amount already paid to the first respondent need not be recovered and the first respondent is entitled for continuity of service.

10. In view of the above modification and direction, the writ petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Rli

Index: Yes/No

NCS : Yes/No



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M.DHANDAPANI, J.

Rli

To

1.The Special Deputy Commissioner of Labour
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