



W.P.No.18057 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18057 of 2017

and

W.M.P.No.19606 of 2017

The Management,
Tamil Nadu State Transport Corporation
(Salem) Limited,
Represented by its General Manager,
No.12, Ramakrishna Road,
Salem - 636 007.

... Petitioner

Vs.

1. The Special Deputy Commissioner of Labour,
DMS Campus, Anna Salai,
Chennai.

2. M.Murugavel (deceased)

3. M.Latha

4. M.Muthukaviya

5. M.Jaya Shri

... Respondents

(R3 to R5 substituted as LR's of deceased second respondent
vide order dated 16.12.2021 made in W.M.P.No.17443 of
2021 in W.P.No.18057 of 2017 by MSRJ)



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the first respondent made in Approval Petition No.190 of 2014 dated 28.10.2016 and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.R.Babu

For Respondents : Mr.M.S.Prem Kumar
Government Advocate for R1
Ms.S.Girija for R3 to R5

ORDER

This Writ Petition has been filed to quash the order passed by the first respondent made in A.P.No.190 of 2014 dated 28.10.2016.

2. Pending Writ Petition, the second respondent expired and his legal heirs have been substituted as parties as respondents 3 to 5.

3. On the charges of unauthorised absence for the period from 25.06.2012, the deceased employee was subjected to domestic enquiry. Based on the Enquiry Officer's report, the charges were proved and the



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petitioner Management dismissed the deceased employee from service through an order dated 03.07.2014. The petitioner Management filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') seeking for approval of the dismissal. The authority through the impugned order dated 28.10.2016 rejected the petitioner's application on the ground that the procedure contemplated by the Hon'ble Supreme Court in the case of ***Lalla Ram vs. D.C.M.Chemical Works Ltd., and another*** reported in ***(1978) 3 SCC 1*** was followed, however the order was passed in violation of principles of natural justice since the deceased employee had produced proof to show that he was suffering from illness attributing to his long absence.

4. The petitioner Management, in the affidavit filed in support of the Writ Petition, have raised many grounds touching upon the factual aspects and relying upon the jurisdiction of the Labour Court under Section 11-A of the Act. The learned counsel for the petitioner also contended that the order of the Labour Court suffers from non-application of mind. It is



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also contended that though the Labour Court had come to a conclusion that, the notice prior to dismissal has been sent to the deceased employee and the petitioner Management had paid one month wages along with the order of dismissal and that the enquiry was conducted in a fair and proper manner. The Labour Court has not assigned any specific reason for dismissal of the Approval Petition except saying that the punishment imposed upon the deceased employee was harsh. Hence, the learned counsel prays for setting aside the impugned order.

5. The learned counsel appearing for the respondents (legal representatives of the deceased employee) submitted that the deceased employee was unable to attend duty on medical grounds and that he has produced a Medical Certificate to that effect to the Branch Manager. He also submits that the proper explanation was given by the deceased employee to the second show cause notice that he was suffering from Jaundice and had to be under continuous treatment. Therefore, the learned counsel vehemently contends that the absence of the deceased employee during the relevant



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period was neither willful nor wanton but purely on medical reasons. This factor has been carefully considered by the Labour Court and therefore, the Labour Court had come to the conclusion that punishment of dismissal imposed on the deceased employee was excessive. Hence, the learned counsel submits that the Approval Petition was rightly dismissed by the Labour Court and the Writ Petition is liable to be dismissed.

6. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

7. On considering the submissions made by the learned counsel appearing for both sides, it is evident that, the Labour Court held that the enquiry was conducted in a fair and proper manner and that one month wages has been paid to the deceased employee along with the order of dismissal and there is compliance of the guidelines laid down in ***Lalla Ram's case***. The only ground on which the Approval Petition was dismissed



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was that the unauthorised absence cited as a reason for dismissal of the deceased employee was neither wilful nor wanton and the deceased employee had produced evidence to show that he was suffering from Jaundice and had to be under continuous treatment for the same. However, it is to be pointed out that where the punishment is disproportionate, invoking Section 11-A of the Act, the Labour Court could modify the punishment. Be that as it may. It is now stated that the second respondent is no more and therefore, the question of reinstatement of the second respondent does not arise. In such view of the matter, the impugned order dated 28.10.2016 made in A.P.No.190 of 2014 is set aside and the legal heirs of the deceased employee, i.e., respondents 3 to 5 shall be entitled for all the DCRG benefits including the family pension as if the second respondent had continued in service on reinstatement. The petitioner Management shall pass appropriate orders for disbursement of the DCRG benefits to the respondents 3 to 5 including the family pension within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the continuity of service granted is only for the purpose of terminal benefits and not for backwages.



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8. Accordingly, this Writ Petition is disposed of. No costs.

Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

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