



WEB COPY



W.P.No.18647 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.18647 of 2017

and

W.M.P.No.20184 of 2017

The Management,
Tamil Nadu State Transport Corporation
(Salem) Limited, Rep. 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. N.Thiruvan,
Conductor, CR 2792 Respondents

Prayer: 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 first respondent made in Approval Petition No.77 of 2015 dated 18.07.2016 and quash the same as illegal and against the provisions of Industrial Disputes Act, 1947.



W.P.No.18647 of 2017

For Petitioner : Mr.R.Babu
For Respondents : Mr.S.John J.Raja Singh
Additional Government Pleader [R1]
Mrs.S.Girija [R2]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records of the first respondent made in Approval Petition No.77 of 2015 dated 18.07.2016 and quash the same as illegal and against the provisions of Industrial Disputes Act, 1947.

2. The second respondent was working as a Conductor at Erumapalayam – II Branch in the petitioner Corporation. He did not report for his duty continuously from 25.09.2013 onwards without any prior permission, thereby, charge memo was issued against the second respondent. After conducting enquiry, he was dismissed from service on 27.03.2015. Subsequently, the petitioner Corporation filed an application in A.P.No.77 of 2015 under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'the Act') for approval of the termination before the



W.P.No.18647 of 2017

first respondent, which was ultimately rejected by order dated 18.07.2016. Aggrieved by the same, the above writ petition is filed before this Court.

3. The learned counsel for the petitioner submits that, the Labour Court has to consider the approval petition under Section 33(2)(b) only in terms of 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***, in which, the Apex Court has prescribed the procedure to be followed while deciding the approval petition. However, contrary to the said procedure, the Labour Court has rejected the approval petition filed by the petitioner Corporation, which is not sustainable. Accordingly, he prays for allowing the writ petition.

4. The learned counsel appearing for the second respondent submitted that, due to ill-health, the second respondent was not able to attend the duty from 25.09.2013 and immediately, thereafter, the second respondent submitted a leave application along with VRS application.



W.P.No.18647 of 2017

WEB COPY

However, the VRS application was rejected by the petitioner Corporation on 23.08.2014. Even then, it is the duty cast upon the petitioner Corporation to refer the second respondent to the Medical Board to ascertain whether he has suffered any illness or not. If the illness is established, then, it is the duty cast upon the petitioner Corporation to provide alternative employment to the second respondent. However, without referring the second respondent to the medical board, the petitioner Corporation had mechanically arrived at a conclusion that the second respondent has wilfully absented himself from duty and passed an order of dismissal, which is not sustainable and the same is highly disproportionate. He further submitted that the Labour Court has passed the impugned order by rejecting the approval petition filed by the petitioner Corporation based on the decision rendered by the Apex Court in *Lalla Ram's case*, which cannot be interfered with. Accordingly, he prays for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner Corporation as well as the second respondent/workman and perused the materials available on record.



W.P.No.18647 of 2017

WEB COPY

6. Admittedly, the petitioner Corporation has passed the order of dismissal as against the second respondent on the ground of unauthorized absence from duty, for which, the petitioner Corporation filed an approval petition before the Labour Court under Section 33(2)(b) before the first respondent/Labour Court. 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



WEB COPY



W.P.No.18647 of 2017

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. It is an undisputed fact that the second respondent filed VRS application based on the medical grounds before the petitioner Corporation and the petitioner Corporation rejected the VRS application on 23.08.2014. Even thereafter, the petitioner Corporation concluded the disciplinary proceedings and passed an order of dismissal as against the second respondent on 27.03.2015. However, the fact remains that, if the second respondent submitted the medical records along with VRS application, it is the duty cast upon the petitioner Corporation to refer the second respondent to the medical board to ascertain whether the second respondent suffered from any illness. If his medical illness is proved before the medical board, it is the duty cast upon the petitioner Corporation to re-consider the entire issue in the disciplinary proceedings. However, without considering the same, the petitioner Corporation passed an order of dismissal contrary to the law laid down by the Apex Court in the case of ***Lalla Ram Vs. Management of***



W.P.No.18647 of 2017

D.C.M.Chemicals Works Ltd. & Ors. reported in AIR 1978 SC 1004.

WEB COPY

8. By considering all the above aspects, the Labour Court has rejected the approval petition filed by the petitioner Corporation. Therefore, the order passed by the Labour Court does not suffer any perversity and the rejection of the approval petition is fully justified and the same cannot be interfered with.

9. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

15.09.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

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



WEB COPY



W.P.No.18647 of 2017

M.DHANDAPANI, J.

sp

W.P.No.18647 of 2017
and
W.M.P.No.20184 of 2017

15.09.2023