



WEB COPY



W.P.No.27979 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

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

W.P.No.27979 of 2017

and

WMP.Nos.30024 of 2017 & 34365 of 2018

The Management,
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Villupuram - 605 602,
Rep. by its Managing Director

...Petitioner

Vs.

1. S.Govindarajan

2. The Special Deputy Commissioner of Labour,
DMS Compound, Chennai – 6.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 2nd respondent made in A.P.No.20/2015 dated 04.11.2016 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.M.Aswin, SC

For Respondents : Mr.K.Arunagiri, for R1



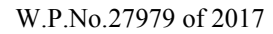
W.P.No.27979 of 2017

ORDER

WEB COPY

This Writ petition has been filed seeking quashment of the order of the 2nd respondent dated 04.11.2016 made in A.P.No.20/2015 as illegal and against the provisions of the Industrial Disputes Act, 1947.

2. The case of the petitioner is that the 1st respondent/workmen was appointed as a driver in the petitioner corporation in the year 1997 and was working at Kallakurichi Depot-2. While so, on 07.10.2010, when the 1st respondent was on duty at a place called Vadathersalur, he was found negligent in driving the bus by taking off the vehicle when a passenger was alighting, resulting in the death of the passenger. Considering the gravity of the misconduct, the petitioner corporation issued a charge memo dated 04.11.2010 as against the workmen and after conducting enquiry by affording appropriate opportunity, the petitioner management dismissed the workmen from service on 28.01.2015. Parallely, the petitioner corporation sought approval before the 2nd respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947 and the same was taken up on file in A.P.No.20/2015 and the 2nd respondent rejected the said approval petition,



vide present impugned order dated 04.11.2016. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner corporation submitted that, though, the petitioner corporation paid a sum of Rs.21,310/- to the 1st respondent towards one month salary, the 2nd respondent has failed to consider the same. Further, delay of 15 days in filing the approval petition will not vitiate the entire proceedings, while so, rejecting the approval petition filed by the petitioner on the ground that, the same was not filed simultaneously before the authority is not sustainable, as the word simultaneous mentioned is not explained either in the Act or in the rules. Hence, the order of the 2nd respondent is liable to be set aside and accordingly, prayed for appropriate orders.

4. Learned counsel for the 1st respondent/workmen submitted that, though departmental proceedings were initiated as against the workmen and he was dismissed from service as early as on 28.01.2015, however, the petitioner corporation had filed the approval petition only on 13.02.2015, after a delay of 15 days, which is fatal. Further, the petitioner corporation



W.P.No.27979 of 2017

failed to take note of the fact that the 1st respondent was acquitted from the criminal case filed by the police, for which case, the departmental proceedings were initiated as against the workmen, which ended in dismissal. Hence, after considering all the above said facts, the 2nd respondent had rightly passed the present impugned order rejecting the approval petition, which does not warrant interference of this Court and accordingly, prayed for dismissal of this Writ petition.

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

6. The issue involved in the present petition is no longer *res integra* and the same has been already decided by the Hon'ble Apex Court in the case of ***Lalla Ram Vs. D.C.M. Chemical Works Ltd. and Ors.***, reported in ***AIR 1978 SC 1004***, which was also followed in various decisions wherein it has been held that the approval petition filed by the management under Section 33(2)(b) should be dealt with in terms of the law laid down by the Hon'ble Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M.***



W.P.No.27979 of 2017

Chemicals Works Ltd. & Ors. In the said decision, the Apex Court has prescribed the procedure to be followed while deciding the approval petition. For better appreciation, the holdings of the Hon'ble Apex Court in the decision stated *supra* is as follows:

"(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."



W.P.No.27979 of 2017

WEB COPY

7. From the materials available on record that, it is seen that the enquiry was not conducted in accordance with law, and that the approval petition was filed with a delay. Both the above aspects weighed in the mind of the Labour Court while rejecting the approval petition. Merely because one month salary is paid, it would not be the basis for the Labour Court to grant approval. All the ingredients as stated in *Lalla Ram case* should be complied with. In the case on hand, the domestic enquiry having found to be not held in accordance with law coupled with the fact that there is delay in the filing of the approval petition, the Labour Court had rejected the approval. Further the submission of the Management that simultaneous would not mean parallel and that the delay of 15 days cannot be construed to be a delay is wholly unacceptable for the simple reason that only to safeguard the interest of the workman, simultaneous procedure had been contemplated. Therefore, it is not open to the Management to file the approval petition as suits its convenience and, therefore, the delay is definitely fatal. Hence, this Court is of the view that, 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.



W.P.No.27979 of 2017

WEB COPY 8. For the reasons aforesaid, this Writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

03.07.2023

skt

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

To

The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai – 6.

7/8



WEB COPY



W.P.No.27979 of 2017

M.DHANDAPANI., J.

skt

W.P.No.27979 of 2017
and
WMP.Nos.30024 of 2017 & 34365 of 2018

03.07.2023