



W.P.No.18932 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.18932 of 2017 and
W.M.P.No.20440 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.Rajkumar

... Respondents

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.196 of 2013 dated 02.06.2016 and quash the same as illegal and against the provisions of Industrial Disputes Act, 1947.



WEB COPY



W.P.No.18932 of 2017

For Petitioner : Mr.R.Babu
For Respondents : Mr.M.S.Prem Kumar
Government Advocate for R1
Mr.Mukund for R2

ORDER

This Writ Petition has been filed to quash the order passed by the first respondent made in A.P.No.196 of 2013 dated 02.06.2016.

2. The Management is the writ petitioner. The second respondent was working as a daily wage Driver with the petitioner Corporation and on account of the unauthorised absence for more than 455 days from 11.03.2012, the second respondent was dismissed from service on 13.06.2013. The petitioner Corporation filed Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') before the first respondent / The Special Deputy Commissioner of Labour which was dismissed by the first respondent vide impugned order dated 02.06.2016. Challenging the same, the present Writ Petition has been filed.



W.P.No.18932 of 2017

WEB COPY

3. The learned counsel appearing for the petitioner vehemently contended that the second respondent was a habitual delinquent and had indulged in unauthorised absence in more than 17 earlier occasions where only minor punishments were imposed and therefore, the first respondent had erred in coming to the conclusion that the punishment imposed upon the delinquent workman is a harsh punishment. Moreover, the unauthorised absence is a grave misconduct as per Clause 16(E) of the Model Standing Order of the petitioner Corporation. The first respondent has passed an impugned order without considering the gravity of the misconduct committed by the delinquent workman and that the impugned order has been passed without taking into note the principles laid down in the case of ***Lalla Ram vs. D.C.M.Chemical Works Ltd., and another*** reported in ***(1978) 3 SCC 1***. The learned counsel further submits that before passing the termination order, the domestic enquiry was conducted, certain charges were proved and based upon the enquiry report only, the delinquent workman was dismissed from service. Since there was a wage dispute pending before the first respondent, the petitioner Corporation sought for



W.P.No.18932 of 2017

approval from the authority with regard to the dismissal as per Section 33(2)(b) of the Act.

4. It is unfair on the part of the first respondent holding that the dismissal order issued to the second respondent was a harsh punishment and can be considered as an unfair labour practice. The learned counsel for the petitioner further submits that the first respondent has not considered the documents placed before it and has passed the impugned order. The dismissal order of the respondent delinquent is completely tenable and the first respondent has erred in dismissing the Approval Petition. Accordingly, the learned counsel for the petitioner seeks for setting aside of the impugned order passed by the first respondent.

5. The learned counsel appearing for the second respondent submitted that the delay in filing of the Approval Petition before the authority is fatal and that no reason has been stated by the petitioner Corporation before the first respondent explaining the delay of 11 days in



W.P.No.18932 of 2017

filing of the Approval Petition. Hence, the order passed by the first respondent / Commissioner of Labour is sustainable and the learned counsel seeks for dismissal of the Writ Petition.

6. This Court has carefully considered the said submissions made on both sides and the materials placed on record.

7. The issue arises in the present Writ Petition has already been dealt with by this Court in W.P.No.1526 of 2017 seeking to quash the dismissal of the Approval Petition filed by the Transport Corporation. The said Writ Petition was dismissed by a learned Single Judge of this Court by order dated 30.07.2021 by relying upon the judgment reported in **1962 (1) LLJ 420 [Strawboard Manufacturing Company v. Gobind]**. The Tamil Nadu State Transport Corporation took up it on appeal in W.A.No.1559 of 2022 and the same was dismissed by the Division Bench of this Court vide judgment dated 18.07.2022 holding that the ratio laid down by the Hon'ble Supreme Court is squarely applicable to the facts and circumstances of the



W.P.No.18932 of 2017

case that any delay caused in filing the Approval Petition would be fatal to the Management and hence, there should not be any delay in filing the Approval Petition.

8. In the instance case also, there is delay in filing the Approval Petition and therefore, the judgment of the Division Bench of this Court upholding the order of the learned Single Judge relying upon the judgment of the Hon'ble Supreme Court is squarely applicable to the facts and circumstances of the present case.

9. Accordingly, this Writ Petition is dismissed in the above terms.
No costs. Consequently, connected Miscellaneous Petition is closed.

11.08.2023

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

vji



W.P.No.18932 of 2017

To
WEB COPY

1. The Special Deputy Commissioner of Labour,
DMS Campus, Anna Salai,
Chennai.
2. The General Manager,
The Management,
Tamil Nadu State Transport Corporation
(Salem) Limited,
No.12, Ramakrishna Road,
Salem - 636 007.



WEB COPY



W.P.No.18932 of 2017

M.DHANDAPANI, J.

vji

**W.P.No.18932 of 2017
and
W.M.P.No.20440 of 2017**

11.08.2023