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W.A.No.579 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED:10.03.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**  
**AND**  
**THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**W.A.No.579 of 2021 and**  
**C.M.P.No.2421 of 2021**

K.Srinivasan

.. Appellant

-VS-

1. The Management,  
Tamil Nadu State Transport  
Corporation (Salem) Ltd.,  
12, Rama Krishna Road,  
Salem-636 007.  
Represented by its General Manager.

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

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order dated 30.09.2019 passed by this Court in W.P.No.11459 of 2017.

For Appellant

: Mr.G.Arul Murugan



W.A.No.310 of 2017

For Respondents : Mr.M.Asmin (R1)  
Mrs.Sangamithirai (R2)  
Special Government Pleader  
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### **J U D G M E N T**

This Writ Appeal has been preferred by the Appellant against the order dated 30.09.2019 made in W.P.No.11459 of 2017 in setting aside the order dated 12.05.2016 passed by the Deputy Commissioner of Labour in rejecting the Approval Petition filed by the Transport Corporation under Section 33 (2)(b) of the Industrial Disputes Act, 1947.

#### **2. Facts as put forth by the Appellant/Workman are as under:**

(i) The Appellant/Workman worked as a driver in the 1st Respondent/ Transport Corporation for 19 years being involved in any accident. As he was severely affected by jaundice, he could not attend to his work and therefore, he submitted an application for leave from 03.06.2013 to 31.07.2013 and again, from 01.08.2013 to 03.09.2013 along with Medical Certificates, and leave was also sanctioned for the said periods. Thereafter, in view of various health ailments, again, he applied leave for the period from 04.09.2013 to 10.11.2013 followed by a representation dated 11.11.2023 to the 1st Respondent, requesting to provide an alternative employment, by enclosing medical fitness certificate from the hospital and a letter from the Union.



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(ii) In the meantime, the 1st Respondent, in order to victimize the Appellant, hurriedly issued a Charge Memo dated 21.06.2013 and conducted a domestic enquiry on 05.08.2013, pursuant to which, the 1st Respondent issued a notice dated 18.04.2014 for termination, for which the Appellant/Workman submitted an explanation on 12.05.2014. Thereafter, the 1st Respondent passed an order dated 11.03.2015, dismissing the Appellant from service and filed a petition in A.P.No.51 of 2015 under Section 33 (2)(b) of the Industrial Disputes Act, 1947 seeking approval of the order of dismissal. However, the said petition was dismissed vide order dated 12.05.2016. Challenging the said order, the 1st Respondent preferred a Writ Petition before this Court in W.P.No.11459 of 2017 and the same was allowed vide order dated 30.09.2019. Being aggrieved over the said order, the Appellant/Workman has preferred the present Appeal.

3. The learned counsel for the Appellant/Workman submitted that the learned Single Judge has erroneously upheld the dismissal order, which has resulted in serious prejudice to the Appellant's right of challenge made to the order of dismissal.

4. The learned counsel appearing for the Respondents 1 and 2 submitted that the learned Single Judge rightly observed that there cannot be any such misplaced sympathy



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in the matter of decorum in industries and in public institutions and upheld the punishment of dismissal from service, by setting aside the order dated 12.05.2016 made in the Approval Petition and hence, the same does not warrant any interference.

5. Heard both sides and perused the records.

6. As a dispute regarding wages was pending between the Management and the Union before the 1st Respondent, the Management sought approval of the 2nd Respondent with regard to dismissal of the Appellant/Workman. The said Authority framed the issues as per the guidelines issued by the Hon'ble Supreme Court in ***Lalla Ram Vs. DCM Chemical Works*** reported in ***AIR 1978 (C) 1004 Lalaram Case 1978***. The Authority, though agreed with the contention of the Management that enquiry has been fairly conducted by following the principles of natural justice, while deciding issue No.3, has come to the conclusion that the punishment imposed on the Appellant/Workman was harsh, which amounts to victimization and thereby, dismissed the Approval Petition preferred by the Management. The said finding runs counter to the findings of the learned Single judge. As rightly held by the learned Single Judge in paragraph 19 of the order dated 30.09.2019, the 2nd Respondent has no jurisdiction to hold that the punishment of dismissal is too harsh after arriving at the conclusion that



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the domestic enquiry was in compliance with the principles of natural justice and based on evidence and other requirements.

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7. In such view of the matter, we find that there is no reason to interfere with the order of the learned Single Judge. Hence this Writ Appeal is liable to be dismissed.

8. Accordingly, this Writ Appeal stands dismissed. However, we make it very clear that the order passed under Section 33 (2)(b) of the Industrial Disputes Act is not a bar to raise an Industrial Dispute under Section 2A of the Act, which shall be raised within a period three years from the date of the dismissal order passed by the Management. Since the matter is pending before this Court, the said period needs to be excluded while calculating the period of limitation. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [R.K.M., J]  
10.03.2023

Index: Yes / No  
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**S. VAIDYANATHAN,J.,**  
**and**  
**R.KALAIMATHI.,J**

arr

To

1. The Management,  
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