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W.P.No.29816 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2023

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THE HONOURABLE MRS.JUSTICE **R. HEMALATHA**

W.P.No.29816 of 2018
and WMP.No.34793 of 2018

The Management
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram, Salem Main Road,
Dharmapuri.

... Petitioner

Vs

1. P. Pazhani

2.Special Deputy Commissioner of Labour,
Chennai.

.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records relating to the order dated 12.09.2017 passed by the Special Deputy Commissioner of Labour, Chennai in AP.No.490 of 2012 and to quash the same.

For Petitioner : Mr.R.Babu

For Respondents : Mr. K.Nagarajan for R1.
Mr. D.Gopal , GA for R2.



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ORDER

This writ petition is filed challenging the orders dated 12.09.2017, passed by the Special Deputy Commissioner of Labour, Chennai in AP.No.490 of 2012.

2. The first respondent was working as a reserve driver under the petitioner/Tamil Nadu State Transport Corporation Ltd, (Salem). On 02.05.2011 when he was driving a bus bearing Registration No.TN25-N-1531, he hit a two wheeler, as a result of which the rider of the two wheeler died on the spot. The first respondent was therefore placed under suspension. A charge memo was also issued to him and after conducting a domestic enquiry, the Enquiry Officer in his report had held that the charges are proved. Subsequently, a 2nd show cause notice was issued to him by the Disciplinary Authority and thereafter dismissed the petitioner from service with effect from 03.08.2012. Subsequently, the writ petitioner filed an application under Section 33(2)(b) before the second respondent in AP.No. 490 of 2012 seeking approval of their action. The second respondent in her orders dated 12.09.2017 dismissed the application on the following grounds (i)the Management had not



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proved the charges against the 1st respondent/driver (ii)the Management did not pay one month salary to the first respondent and (iii)while the workman was dismissed from service with effect from 03.08.2012, the approval petition under Section 32(2)(b) was filed with a delay of 5 days. Aggrieved over the said orders, the present writ petition has been filed by the petitioner/Management.

3. Mr.R.Babu, the learned counsel appearing for the petitioner would contend that the first respondent was responsible for the accident that took place on 02.05.2011 and the Enquiry Officer had conducted the enquiry in proper manner and had also come to a conclusion that the delinquent driver was rash and negligent in driving the bus. He would further contend that merely because there is a delay of 5days in filing the approval petition, the second respondent ought not to have dismissed the application filed by the petitioner.

4. Per contra, the learned counsel for the second respondent would contend that the second respondent had properly analysed the evidence on record and had come to a definite conclusion that the



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petitioner/Management has not followed the proper procedure in conducting the enquiry and one month wages has also not been paid to the workman. It is also the contention, that the approval petition has not been simultaneously filed, as per the decision of the Hon'ble Apex Court in **1978 (3) SCC 1** in the case of **Lalla Ram Vs. D.C.M. Chemical Works Ltd and another.**

5. At the outset, it may be observed that in the domestic enquiry, the conductor of the bus was examined as one of the witnesses and he had clearly stated that the 1st respondent/Driver was not responsible for the accident. Moreover, the Inspector of Police, Sipcot Police Station, who had registered the FIR had filed a referred charge sheet stating that the facts were mistakenly mentioned in the FIR, based on which the FIR was also closed by the concerned Judicial Magistrate.

6. However, based on the evidence on record, the second respondent had come to a conclusion that the charges against the respondent/workman was not proved. I do not find any reason to interfere with the same. It is also seen from the records the first



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respondent/driver was not paid one month wages and it is admitted that the first respondent is entitled to get 72% of dearness allowance with effect from 01.07.2012 and this was not paid to the first respondent.

7. In the decision in **Lalla Ram V. D.C.M. Chemical Works Ltd and another** the Hon'ble Apex Court has held that the approval petition should be filed simultaneously or within reasonable short period of time as to form part of the same transaction.

8. In the instant case, admittedly there is a delay of five days and it has not been properly explained by the petitioner/Management. In these circumstances, the writ petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

23.11.2023.

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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To
1.Special Deputy Commissioner of Labour,
Chennai.



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R. HEMALATHA, J.
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