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W.P.No.32633 of 2018 & W.M.P. No. 37855 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.32633 of 2018 & W.M.P. No. 37855 of 2018

The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Villupuram Region, Villupuram 605 602
Represented by its General Manager

... Petitioner

Vs.

1. K.R. Krishnamoorthy

2. The Special Joint Commissioner of Labour,
Chennai 600 006

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the order dated 19.02.2018 passed by the Special Joint Commissioner of Labour, Chennai in A.P.No.178 of 2014 and quash the same.

For Petitioner	:	Mr.M. Aswin
For R1	:	Mr.D. Veerasekaran
For R2	:	Ms.C. Meera Arumugam Additional Government Pleader.



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ORDER

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Challenge in this Writ Petition is made to the orders dated 19.02.2018, passed by the Special Joint Commissioner of Labour, Chennai, in A.P.No.178 of 2014.

2. The Writ Petitioner is the Tamil Nadu State Transport Corporation (Villupuram) Limited represented by its Management. The 1st respondent joined the service of the petitioner Corporation as a conductor. On 02.07.2012, the 1st respondent was found with an excess amount of Rs.100/- in his conductor cash bag and on further checking, it was noticed that he obtained the money from the passengers without issuing tickets to them. Therefore he was suspended from service on 03.07.2012 and a Charge Memo was issued to him on 05.07.2012. Subsequently, the order of suspension was revoked on 04.08.2012. A Departmental Enquiry was contemplated against him after framing charges. Since the 1st respondent did not participate in the Enquiry Proceedings even though several opportunities were given to him, the Departmental Enquiry was closed after the Management marked 10 documents. The Enquiry Officer submitted his Enquiry Report dated



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10.12.2013 holding that the charges against the 1st respondent were proved. Thereafter, a second show cause notice was issued to the 1st respondent on 04.03.2013 and he sent his reply on 11.04.2014. As the explanation given by the 1st respondent was not found satisfactory, he was removed from service by a final order dated 22.07.2014. He was also paid one full month salary as per the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act").

3. According to the Writ Petitioner Management, the 1st respondent had committed similar acts of misconduct on various occasions and he was warned and censured. However, he did not mend himself and therefore he was removed from service. The Writ Petitioner filed a petition in A.P.No.178 of 2014 for approval under Section 33 (2) (b) of the ID Act before the 2nd respondent and the 2nd respondent, vide her orders dated 19.02.2018, dismissed the Approval Petition on the following grounds:

- i. The Departmental Enquiry is conducted in violation of Principles of Natural Justice as the 1st respondent was not given sufficient opportunity to explain his stand.
- ii. Since the Departmental Enquiry has not been done properly, the



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1st respondent was victimised by the Writ Petitioner.

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iii. The petitioner Management has not paid full one month salary and there is a deficit of Rs.490/-.

iv. Though the 1st respondent was dismissed from service on 22.07.2014, the Approval Petition was filed on 28.07.2014 and thus there is a delay of 6 days in filing the Approval Petition.

Aggrieved by the said orders passed by the 2nd respondent, the present Writ Petition is filed by the Tamil Nadu State Transport Corporation (Villupuram) Limited.

4. Mr.M. Aswin, learned counsel for the Writ Petitioner contended that Section 33 (2) (b) of the ID Act states that an Approval Petition should be filed after dismissal of an employee and it does not prescribe any outer limit for the same. He also drew the attention of this Court to Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958, which reads thus:

64. Application to the Conciliation Officer, Board, Labour Court or Industrial Tribunal under Section 33. -- (1) An application under sub-section (1) or sub-section (3) of



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section 33 shall be in duplicate in Form “S” and filed before the Conciliation Officer, Board, Labour Court or Tribunal either personally or by registered post acknowledgment due. A copy of it shall also be served simultaneously either personally or by registered post acknowledgment due on the workman or the workmen concerned and the fact indicated on copies of the application presented to the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 33 shall present an application in Form “T” in duplicate to such Conciliation Officer, Board, Labour Court or Tribunal either personally or by registered post with acknowledgment due. A copy of it shall also be served simultaneously either personally or by registered post acknowledgment due on the workman or workmen concerned and the fact indicated on the copies of the application presented to the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be."

According to him the word 'simultaneously' mentioned in Rule 64(2) has been incorporated in the decision of the Hon'ble Supreme Court in **Lalla**



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***Ram vs. D.C.M. Chemical Works Ltd.* reported in (1978) 3 SCC 1.**

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4.1. The learned counsel for the Writ Petitioner also relied on the decision of the Division Bench of this Court in the case of ***V.Duraisamy vs. The Management, Tamil Nadu State Transport Corporation (Coimbatore Division-1) Limited and another (W.A. No.2814 of 2012)***, wherein it has been held that the Labour Court was wrong in refusing to accord approval for the dismissal of the employee for the reason of delay of 13 days in filing the Approval Petition. He also contended that the 2nd respondent had observed in its orders that the Management did not examine the passengers who were not issued with tickets in the Departmental Enquiry. According to him, this observation is wrong as non examination of independent witness does not render the finding of guilt or punishment invalid. He would further contend that the jurisdiction of the Joint Commissioner of Labour cannot be equated with that of the jurisdiction under Section 10 of the ID Act while considering an application for approval of order of punishment under Section 33(2)(b) of the ID Act. The scope of the Joint Commissioner of Labour is limited one. He also relied on the decision of the Hon'ble Supreme



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Court in ***Cholan Roadways Ltd., Vs. G.Thirugnanasambandam***

reported in (2005) 3 SCC 241, wherein it has been held thus:

"18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in [Martin Burn Ltd. vs R.N. Banerjee](#) (AIR 1958 SC 79). While exercising jurisdiction under [Section 33\(2\)\(b\)](#) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regard the validity or otherwise of the domestic enquiry held against the delinquent; keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the [Industrial Disputes Act](#). In [Martin Burn's case](#) (supra) this court stated:

"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the



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judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. (See Buckingham & Carnatic Co. Ltd. vs The Workers of the Company (1952) Lab. AC 490(F)."

He would therefore contend that the order passed by the 2nd respondent is totally perverse.

5. Per contra, Mr.D. Veerasekaran, learned counsel for the 1st respondent would contend that the 2nd respondent after analysing the evidence on record had rendered a factual finding and this Court cannot interfere with the same by invoking Article 226 of the Constitution of India. He, therefore, prayed for dismissal of the Writ Petition.

6. At the outset, it may be observed that the 1st respondent did not participate in the Domestic Enquiry and he was set *ex parte*. It is not disputed by him that there was an excess amount of Rs.100/- in his conductor cash bag. His explanation was that he received a sum of Rs.100/- from a passenger and the said passenger forgot to get the balance amount. The Management was not satisfied with this explanation and they have taken into account the past record of the 1st



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respondent wherein he had misappropriated amounts collected from the passengers. The following tabular column will explain the same.

<i>Sl.No.</i>	<i>Date of Offence</i>	<i>Irregularities</i>	<i>Punishment Awarded</i>
1.	17/08/2006	Having excess cash in his cash bag	Recorded warning.
2.	01/11/2007	Misappropriation of Corporation Revenue by collecting fare and not issuing tickets.	Increment postponed for 6 months WOCE
3.	11/11/2008	Misappropriation of Corporation Revenue by collecting fare and not issuing tickets.	Increment postponed for 2 years WOCE.
4.	18/03/2009	Having excess cash in his cash bag.	Recorded warning.
5.	08/07/2010	Having excess cash in his cash bag.	Recorded warning.
6.	17/06/2011	Having excess cash in his cash bag.	Recorded warning.
7.	21/08/2011	Having excess cash in his cash bag.	Increment postponed for 12 months WOCE.
8.	19/10/2011	Misappropriation of Corporation Revenue by collect fare and issuing ticket.	Increment postponed for 5 years WCE.

6.1. A perusal of the records shows that the enquiry notice was served on the 1st respondent on 02.11.2012. But, he did not attend the enquiry proceedings. Several adjournments were granted to the 1st respondent and finally on 04.12.2013 , the enquiry was closed as the 1st



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respondent, though appeared before the Enquiry Officer, walked out as he was not given permission to engage a counsel. It is the contention of the learned counsel for the Writ Petitioner that the Management has not engaged any counsel on their behalf. Thus it is seen that the 1st respondent had dragged on the proceedings for nearly one year and therefore the closure of the Domestic Enquiry by the Enquiry Officer is perfectly in order. Therefore it cannot be said that the Management has not followed the Principles of Natural Justice.

6.2. The 1st respondent was removed from service with effect from 22.07.2014 and on that date his salary was Rs.14,280/-. Subsequently on 30.12.2014, the Government of Tamil Nadu increased the Dearness Allowance (DA) from 100% to 107% vide G.O.(Ms) No.147. The 2nd respondent had observed that the Management had not calculated the DA at the rate of 107% and thus there is a deficit of Rs.490/-. This observation is totally perverse for the simple reason that the Government itself increased the D.A by 7% only on 30.12.2014 and the employee was removed from service on 22.07.2014. Though the Government directed the employer to pay the increased DA from the month of July 2014, the 1st respondent cannot take advantage of the same that on the date of



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removal from service he was not given 107% DA. Therefore, the observation made by the 2nd respondent in this regard is perverse.

6.3. The third aspect is that filing of Approval Petition simultaneously with the order of removal from service. In the instant case, though the 1st respondent was removed from service on 22.07.2014, the approval petition was filed on 28.07.2014. Thus there is a delay of 6 days. In the instant case after serving notice of removal from service to the 1st respondent the Management had filed the Approval Petition under Section 33(2)(b) of the ID Act before the 2nd respondent. In the decision in ***V.Duraisamy vs. The Management, Tamil Nadu State Transport Corporation (Coimbatore Division-1) Limited and another*** (cited supra), it has been held thus:

....Finally, he was put to face enquiry before the domestic enquiry officer, who has given a finding that the appellant was found guilty of charges. Therefore, the Management passed an order of dismissal from service on 19.11.2003 and thereafter, with the delay of 13 days, they moved an Approval Petition before the second respondent seeking approval of the order of dismissal. The reasons given by the second respondent, refusing to accept the Approval Petition, are extracted as



under:

'1.The Applicant had not come to a bonafide conclusion that the Opposite Party was guilty of the charges framed against him.

2.The Applicant had not applied to this Authority for the approval of the dismissal of the Opposite Party either simultaneously or within such reasonably short time as to form part of the same transaction.-

6.We are not impressed by the reasons given by him. When the appellant had driven the vehicle on 05.11.2002, he should have attempted to stop the vehicle, but he has not done so. Due to the same, the poor pedestrian became victim and thereafter, the cyclist and the pillion rider also became victims. It cannot be disputed that multiple death of three persons was caused by careless and rash driving of the driver of the bus. Therefore, without waiting for the Award from the Tribunal, the Management has rightly proceeded with the departmental enquiry and ultimately, dismissed the appellant from service by order dated 19.11.2003 finding him guilty of charges. But, the second respondent without considering the above aspects, has refused to accord approval for the dismissal of the appellant. However, the learned Single Judge holding that all the essential requisites of the proviso to Section 33(2)(b) of the Act are complied with by the Management, has rightly set aside the order passed by the second respondent and allowed the writ



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petition filed by the Management and granted the order of approval. Therefore, we are not inclined to interfere with the order passed by the learned Single Judge. For the above reasons, this writ appeal stands dismissed. "

As rightly contended by the learned counsel for the Writ Petitioner, the 2nd respondent has not taken into account the past record of the 1st respondent as he has been in the habit of misappropriating money. Therefore, denying permission to grant approval by the 2nd respondent is perverse and therefore, the present Writ Petition is allowed. No costs. Consequently connected Writ Miscellaneous Petition is closed. The orders dated 19.02.2018 passed by the Special Joint Commissioner of Labour, Chennai in A.P.No.178 of 2014, is quashed.

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bga
Index : yes/no
Speaking /Non speaking Order

To

The Special Joint Commissioner of Labour,
Chennai 600 006



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R.HEMALATHA, J

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