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W.P.No.21653 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM :

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

W.P.No.21653 of 2023

and

WMP.No.21021 of 2023

The Management,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
Kancheepuram Region.

...Petitioner

Vs.

Thiru C.Natarajan (Late)

1. Thilagavathi
2. Neerja
3. Jaleshraj
4. Kannammal

5. The Special Deputy Commissioner of Labour,
DMS Compound, Chennai.

...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 5th respondent made in A.P.No.117/2014 dated 09.05.2017 and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.M.Ashwin



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ORDER

This Writ petition has been filed seeking quashment of the order of the 5th respondent dated 09.05.2017 made in A.P.No.117/2014.

2. The case of the petitioner is that, one C.Natarajan was appointed as a conductor in the petitioner corporation. While so, without obtaining prior permission, the said C.Natarajan absented himself unauthorizedly from 18.03.2013 and that too, even till the date of passing the termination order i.e.,29.04.2014. Thereby, a charge memo came to be issued, and after conducting enquiry by affording opportunity, as the charges levelled against the said Mr.C.Natarajan were proved, the petitioner corporation passed the order of dismissal against the said Mr.C.Natarajan on 29.04.2014. Thereafter, the petitioner corporation filed the approval petition under Section 33(2)(b) of the Industrial Disputes Act, before the 5th respondent and during the pendency of the dispute, the said C.Natarajan died and his legal heirs were brought on record. However, by the impugned order, the 5th respondent refused to grant approval to the petitioner corporation. Challenging the same, the petitioner corporation is before this Court.



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3. Learned counsel for the petitioner submitted that, for unauthorized absence, the deceased C.Natarajan was dismissed from service, vide order of dismissal dated 29.04.2014 and he was paid with one month salary. Simultaneously, the petitioner corporation filed approval petition under Section 33(2)(b) of the Industrial Disputes Act, before the 5th respondent, seeking approval of the dismissal of the said C.Natarajan, however, the 5th respondent refused to grant approval and the reasons stated by the 5th respondent for the rejection of the approval petitions are wholly unsustainable. Hence, he prayed for appropriate orders.

4. Admittedly, for certain misconduct committed by the deceased C.Natarajan, the petitioner Corporation has passed the order of dismissal, and for approval of which, the petitioner Corporation filed approval petition before the 5th respondent under Section 33(2)(b) of the ID Act. It is an undisputed fact that the approval petition has to be decided based on the basis of the law laid down by the Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, wherein the Apex Court held as under :-



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"(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."

5. In the present cases, the 5th respondent rejected the approval petition filed by the petitioner corporation on the ground that, no documentary proof had been filed to show that the domestic enquiry was conducted after following the principles of natural justice and as per law



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and that, the proceedings during the domestic enquiry were not filed to show that a prima facie case was made out and that, the punishment given was also disproportionate to the charges and that, no proof was filed evidencing payment of one month salary with 100% dearness allowance and that, the action initiated against the employee was not integral and that, the approval petition was filed with a delay, which are clear violation of the procedures contemplated in the case of **Lalla Ram** (*supra*), and thereby, the 5th respondent, rejected the respective approval petition filed by the petitioner corporation. It is pertinent to note that, the deceased Natarajan was dismissed from service on 29.04.2014, and the Government, vide Government order bearing G.O.Ms.No.96 dated 03.04.2014, increased the Dearness Allowance by 10% i.e., from 90% to 100%, and thereby the deceased Natarajan, who was dismissed after the above said G.O. came to be passed, is also entitled for the same, and whether the said amount was paid to him completely or not was not established by the petitioner corporation, and after taking into consideration all the above said facts, the approval petition filed by the petitioner corporation was rejected by the 5th



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respondent. Further, for mere unauthorised absence, imposing a maximum punishment of dismissal from service cannot be acceded to.

6. A perusal of the order passed by the Labour Court reveals that there is no due compliance of the guidelines enunciated in *Lalla Ram* case. Further, the Labour Court has considered all the material aspects and has rendered a finding that the Management has not paid one month wages to the workman and there is clear violation of the safeguards provided under section 33(2)(b) of the ID Act and, therefore, approval cannot be granted. This Court, upon careful perusal, is in agreement with the decision arrived at and is not inclined to interfere with the order impugned in this Writ petition, as the same does not suffer from perversity. The petitioner management is directed to settle the entire terminal benefits to the respondents herein, who are the legal heirs of the deceased C.Natarajan, within a period of four weeks from the date of receipt of a copy of this order.



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WEB COPY 7. For the reasons aforesaid, this Writ petition stands dismissed.

There shall be no order as to costs. Consequently, the connected Miscellaneous petition is closed.

24.07.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

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



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M.DHANDAPANI., J.

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