



W.P.No.21038 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.01.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.21038 of 2014

and

M.P No.1 of 2014

and

W.M.P.No.27774 of 2017

Tamil Nadu State Transport Corporation (Salem) Ltd.,
Dharmapuri Division,
Salem Salai, Bharathipurarm,
Rep by the General Manager,
Dharmapuri

.... Petitioner

vs

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

2. D.Dhakshinamoorthy (deceased)

3.Nirmala

4.Mohan

5.Surya

6.Minor Lishanthan

(Respondents 3 to 6 were impleaded vide
order dated 02.12.2022 in WMP No.24360
of 2022)

.... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent's order passed in Approval Petition No.31/2012 dated 25.04.2013 and quash the same as illegal and against the provisions of Industrial Disputes Act, 1947.

For Petitioner : Mr.R.Babu

For respondents : Mr.S.Arumugam, Govt.Advocate for R1
Mr.V.Jeevagiridharan for R2
Mr.P.S.Kothandaraman
for R3 to R6

ORDER

This writ petition has been filed challenging the approval petition dated 25.04.2013, in which, the approval sought for by the petitioner Management from the 1st respondent for the dismissal order dated 21.01.2012 passed against the 2nd respondent, was rejected by the 1st respondent.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

3. The brief facts of the case are as follows:-

The 2nd respondent/ E.Dhakshinamoorthy, Conductor was working at



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Thirupathur Branch in the petitioner's Corporation. He did not report for duty continuously from 07.01.2010 onwards without prior permission and intimation. Hence, it amounts to grave misconduct as per clause 16(E) of the Standing order of the petitioner's Corporation. Therefore, charge memo dated 30.01.2010 was sent to the 2nd respondent through registered post, based on the report dated 19.01.2010 from the Branch Manager. But the same was returned informing 'no such addressee' and the charge memo was exhibited in the notice board of Thirupathur Branch. There was no reply from the 2nd respondent. Therefore, the petitioner Management was constrained to appoint an Enquiry Officer and the same was duly communicated to the 2nd respondent. There was acknowledgment of receipt confirming the service of notice. Later, the Enquiry officer conducted enquiry on 26.05.2010. Since there was no appearance on the side of 2nd respondent, the enquiry was postponed. Though sufficient opportunity was given to the 2nd respondent, there was no response. Therefore, the Enquiry officer concluded that the charges were held proved and the 2nd show cause notice was issued calling upon the 2nd respondent for his explanation for the provisional conclusion of punishment of dismissal based on the enquiry officer's report. The 2nd



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respondent forwarded a letter dated 25.11.2010, in which, he has not stated any valid reasons for his absence. Therefore, the petitioner Management sought approval of the 1st respondent with regard to the dismissal of the 2nd respondent. The 1st respondent passed an order dated 25.04.2013, rejecting the approval petition. Hence, this writ petition.

4. The learned counsel for the petitioner would submit that the 1st respondent has passed the order without application of mind and without appreciation that the absence of the 2nd respondent is voluntary. There was also acknowledgment of receipt confirming the service of notice to the 2nd respondent. Further, on his non-appearance, the enquiry was also postponed intimating that ex parte order will be passed if there is no appearance. Learned counsel would further submit that though several opportunity was given, the 2nd respondent did not participate in the enquiry and the 1st respondent ought not to have rejected the approval petition. Therefore, he would pray to allow this writ petition.

5. On the contrary, the learned counsel appearing on behalf of the



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workman would submit that the 2nd respondent is without employment from 07.01.2010 even before the dismissal order was passed, and he was refused employment abruptly without any written order. Instead of complying with the order passed by the 1st respondent and reinstating the 2nd respondent, the petitioner management has filed this writ petition, keeping the 2nd respondent without employment from 07.01.2010 onwards. Learned counsel would further submit that there is no other source of income for the 2nd respondent except the income from his job and without income, the 2nd respondent's family is finding very difficult to make ends meet. Further, due to the sufferings and mental agony, the 2nd respondent fell sick and during the pendency of the writ petition, he passed away on 4.6.2021 and subsequently, his legal representatives were brought on record. Hence, he would pray to confirm the order passed by the 1st respondent.

6. This Court, considered the rival submissions and perused the materials available on record.

7. On perusal of the impugned order, it is seen that the allegation of the



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petitioner Management against the 2nd respondent is that they have received a complaint against the 2nd respondent from one Murugadoss, a passenger of the bus stating that while the 2nd respondent/Conductor was on duty on 6.1.2010, in the route of Tiruvannamalai to Bangalore, the said Murugadoss, who was travelling in the bus with his child, requested the 2nd respondent to stop the bus and allow his child to urinate, but the 2nd respondent did not stop anywhere on the way, and he stopped the bus only at Bangalore and thus, his child fell sick and therefore, he had filed a petition before the Tiruvannamalai Consumer Forum, seeking for compensation of a sum of Rs.50,000/- against the petitioner Management. The 2nd respondent denied the said allegation as false. He would state that he was prevented from reporting to duty stating that he will be allowed to report for duty only on getting apology letter from the complainant Murugadoss. Though he approached the Management on several occasions to report for duty, they did not allow him. His absence is not voluntary but he was not given any duty and compelled to remain absent. That apart, it is seen that as against the driver, Chennakesavan, who was on duty during the relevant time, no action was taken. Only for 15 days, the said driver was not allowed to join duty and thereafter, he joined duty and he is in



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service till date.

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8. At this juncture, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of ***Krushnakant B. Parmar V. Union of India and Another reported in 2012 (3) SCC 178***, whereby it was held that when the absence of an employee is owing to compelling reasons, the absence cannot be termed as “wilful” and therefore, the charges of such absence cannot be held against the employee.

9. In the case on hand, the wilful absence of the 2nd respondent has not been properly proved by the petitioner Management. The domestic enquiry was hurriedly conducted and an exparte order was passed holding the charges as proved. Further, the punishment of dismissal from service is also disproportionate to the charges levelled against the 2nd respondent. The 1st respondent had elaborately discussed the same in the impugned order and had rightly rejected the approval petition, with which, this Court is not inclined to interfere with.



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10. In view of the above discussion, this Court finds no infirmity or illegality in the order passed by the 1st respondent. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

25.01.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

To

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

J.NISHA BANU,J.



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vs

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