



W.P.Nos.34716 of 2006
and
20375 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.10.2023

PRONOUNCED ON : 13.02.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.Nos.34716 of 2006 and 20375 of 2012
and
W.M.P.Nos.1 of 2006 and 1 of 2012

The Tamil Nadu State Transport Corporation,
(Villupuram) Ltd., rep. by its General Manager,
Vellore ... Petitioner in both the W.Ps.

Vs.

1. The Joint Commissioner of Labour,
(Conciliation) DMS compound,
Teynampet, Chennai- 6. ... first respondent
in W.P.No.34716 of 2006
2. The Presiding Officer,
Labour Court, Vellore. ... first respondent
in W.P.No.20375 of 2012
2. B.Murthy ... second respondent in both the
writ petitions



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PRAYER in W.P.No. 34716 of 2006 : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari, call for the records of the first respondent in Approval Petition No.146 of 2003 dated 12.02.2005 and quash the same.

Prayer in W.P.No.20375 of 2012: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 in I.D.No.275 of 2003 and quash the award passed in I.D.No.275 of 2003 dated 10.11.2011 as illegal by holding the grant of reinstatement with 25% back wages.

For petitioner	:	Mr. Aswin
For R1	:	Ms.C.Sangamithirai
For R2	:	Mr.K.Vikram
		For Ms.V.Srimathi

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COMMON ORDER

In view of the inter connectivity of cases, these writ petitions are considered and decided by this common order. For the sake of clarity, the



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petitioner and the second respondent will be referred to as the management and the workman respectively.

2. These writ petitions are filed to quash the Approval Petition No.146 of 2003 dated 12.02.2005 and the award passed in I.D.No.275 of 2003 dated 10.11.2011.

3. The facts in brief culled out from the affidavit enclosed in the writ petitions are as follows:

4. The workman was working as a Driver in the petitioner's Corporation and he absented himself from duty for a period from 29.07.2002 to 14.08.2002 against the standing orders of the Corporation. Subsequently, a charge memo dated 24.08.2002 was issued calling for his explanation. As there was no reply, a domestic enquiry was initiated against the workman/second respondent and the charges leveled against the workman/second respondent was proved. A second show cause notice dated 20.02.2003 was issued to the workman/second respondent proposing the



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punishment of dismissal but as there was no explanation from the workman/second respondent, thereby, he was removed from service by an order dated 30.04.2003. By then, an Industrial Dispute was pending between the Management of the petitioner's Corporation and the unions of workmen before the first respondent.

5. The petitioner Corporation filed Approval Petition No.146 of 2003 before the first respondent/ Joint Commissioner of Labour, seeking approval for the dismissal of the workman/second respondent under Section 33(2) of the I.D.Act. However, the first respondent/ Joint Commissioner of Labour by an order dated 12.02.2005 rejected the petition. Aggrieved by the same, the Corporation has filed W.P.No.34716 of 2006.

6. Aggrieved by the dismissal, the workman raised Industrial Dispute invoking Section 2(A)(2) of the Industrial Disputes Act, 1947 seeking reinstatement with continuity of service, back wages and other attendant benefits before the Presiding Officer, Labour Court, Vellore, in short labour Court. The labour Court after hearing both sides, partly allowed



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the Industrial Dispute on 10/11/2021. The relevant portion of the award passed by the labour Court is extracted hereunder for ease of reference:

"17.So considering the oral and documentary evidences of the case, and also judgments of the Supreme Court of India and also the High Court of Judicature of Madras, this Court is of the considered opinion, that the punishment awarded to the petitioner/workman is too harsh and highly excessive. So this Court wanted to exercise the power conferred under Section 11 A of the I.D.Act,1947 to some extent.

.....

However, there is no order of stay against the Industrial Dispute raised by the petitioner. So there is no bar to proceed with the case since the labour disputes is pending for disposal from 10.12.2003.



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Since there is no stay and also the facts and circumstances of the case, it is incorrect to say that the Industrial Disputes can be disposed off due to the petition filed by the respondent management.

18. So considering the facts and circumstance of the case, and also the judgments of the Supreme Court of India and also the High Court of Judicature at Madras, as I already discussed earlier, this Court wants to modify the punishment awarded to the petitioner/workman. Hence the respondent is directed to reinstate the petitioner/workman in service with continuity of service and 25% of back wages with all other attendant benefits. Hence point Nos.1 & 2 are answered accordingly.



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19. *Point No.3:- In the result, this petition is partly allowed, the respondent management is directed to reinstate the petitioner in service with continuity of service and 25% of back wages with all other attendant benefits. No costs.*

Challenging the aforesaid award passed by the labour Court, the management has preferred a W.P.No.20375 of 2012.

7. Thus, to sum up, while W.P.No.34716 of 2006 is filed by the management challenging the order passed by the authority in the approval petition, W.P.No.20375 of 2012 is also filed by the management challenging the award of the labour Court in the Industrial Dispute raised by the workman.

8. Counter affidavits have been filed by the second respondent. Primarily, the contention of the second respondent/workman is that in as much as he has been reinstated, he is entitled to get last drawn wages under



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Section 17 B of the I.D.Act and also entitled to get back wages to the tune of Rs.10,00,000/- for the unemployment period in the light of the order of the authority passed in the approval petition.

9. Heard Mr.Aswin, learned counsel for the petitioner, Ms.C.Sangamithirai, learned Special Government Pleader for the first respondent and Mr.K.Vikram, learned counsel for the second respondent.

10. According to the learned counsel for the petitioner/Corporation, labour Court should not have passed the impugned order since the order passed by the labour Court declining to grant approval in Approval Petition No.146 of 2003 is challenged before this Court in W.P.No.34716 of 2006 and on account of pendency of writ petition, the labour Court should not have disposed of I.D.No.275 of 2003 filed by the second respondent, challenging the dismissal.

11. The respondent No.2 in both the writ petitions working as a Driver in the petitioner Corporation was absent unauthorisedly from 29/7/2002 to



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14/8/2002. The petitioner Corporation has conducted an enquiry and was dismissed from service. The petitioner Corporation has filed Approval Petition No.146 of 2003 under Section 33 (2) (b) of the Industrial Disputes Act, 1947 seeking approval of the dismissal, but the same was dismissed on 12/2/2005. Aggrieved by the same, the petitioner Corporation has filed W.P.No.34716 of 2006.

12. The second respondent has filed I.D.No.275 of 2003 under Section 2 A (2) of the Industrial Disputes Act, 1947, seeking reinstatement with continuity of service, backwages and other benefits and the same was allowed by way of impugned order, dated 20/11/2009, directing the petitioner to reinstate the second respondent with continuity of service and to pay 25% of backwages with all attendant benefits. Aggrieved by the same, the petitioner Corporation has filed W.P.No.20365 of 2012.

13. I have gone through both the writ petitions to see whether any interim orders have been passed in W.P.No.34716 of 2006 directing the labour Court not to proceed with I.D.No.275 of 2003. As long as there is no



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stay order from proceeding with the disposal of I.D.No.275 of 2003, the petitioner Corporation cannot contend that the labour Court should not have disposed of I.D.No.275 of 2003 until W.P.No.34716 of 2006 is disposed of. If at all the Corporation wants I.D.No.275 of 2003 should not have been proceeded by labour Court, stay petition should have been filed in the writ petition or in the I.D.No.275 of 2003 itself but no such effort was made by Corporation.

14. W.P.No.34716 of 2006 was filed challenging the rejection of Approval Petition filed by the petitioner. Once the approval is declined, it is deemed that the entire disciplinary proceedings initiated against the second respondent are vitiated and in normal course, the second respondent has to be reinstated back. However, the second respondent has filed I.D.No.275 of 2003 challenging the dismissal of I.D.No.275 of 2003 under 2 A (2) of the Industrial Disputes Act, 1947. Even if the labour Court allows the Approval Petition filed by the Corporation in Approval Petition No.146 of 2003 even then, the workman/second respondent will have a right to challenge the dismissal order independently. There is no law or rule or precedent which



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prohibits the labour Court from proceeding to dispose of both the Approval petition No.146 of 2003 filed by the petitioner and I.D.No.275 of 2003 filed by the second respondent. Therefore, the petitioner Corporation cannot contend that since the Writ Petition No.34716 of 2006 is pending in respect of Approval Petition declining of approval, the labour Court should not have disposed of the application in I.D.No.275 of 2003 is not at all convincing.

15. In I.D.No.275 of 2003, the labour Court has elaborately discussed the mode in which the enquiry was conducted. A preliminary award has been passed by the labour Court to consider whether domestic enquiry conducted against the second respondent was in free and fair manner and whether principles of natural justice have been followed and by an order dated 20/11/2009, the labour Court has given a finding that the domestic enquiry conducted by the petitioner Management was not in a free and fair manner. Thereby, opportunity was given to the Corporation to prove the misconduct of second respondent by adducing evidence. Accordingly, one witness was examined by the Corporation and however, no document was marked.



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16. The labour Court has gone extensively in respect of factual issues involved in the dispute between the parties in respect of unauthorized absence of the second respondent from 29/7/2002 to 14/8/2002. The workman/second respondent has canvassed before the labour Court that he was not an habitual absentee and due to family issues, he was absent during the relevant time and further submitted that the punishment of dismissal from service was highly excessive. On behalf of the petitioner Corporation, it was submitted that on account of unauthorised absence of workman/second respondent, there was a huge loss to the Department.

17. The labour Court, while holding that the documents that are marked during the course of domestic enquiry are not marked again before the labour Court has come to the conclusion that the second respondent himself has admitted that he was unauthorizedly absent during the relevant period and there was no other material contradicting the same and thereby held that misconduct against the second respondent was proved. However, in respect of punishment is concerned, while considering the judgment of the Hon'ble Supreme Court in *R. Balavenkatakrishnan (died) Vs. The*



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Presiding Officer, Labour Court, Salem 2009 3 LLJ 373 SC, the labour Court has come to the conclusion that dismissal of service on account of alleged misconduct from 29/7/2002 to 14/8/2002 is highly disproportionate and thereby, directed the petitioner to reinstate the second respondent with 25% of backwages and continuity of service with attendant benefits.

18 . Having gone through the impugned award, it is clear that the labour Court, has rightly concluded that basing on the materials available before the Court that the second respondent was guilty of misconduct. The workman/second respondent did not prefer any appeal in respect of the finding of the labour Court that the second respondent was guilty of the misconduct of unauthorized absence. In respect of the punishment, the workman/second respondent was absent for about fifteen days for which the petitioner Corporation has removed the second respondent from the service. In such a view of the matter, this Court is of the opinion that for the absence of fifteen days, dismissal of service is shockingly disproportionate and therefore, the labour Court has rightly exercised its jurisdiction in the manner and corrected the finding of the disciplinary authority.



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19. There was no stay order granted by this Court in W.P.No.34716 of 2006 in respect of implementation of the rejection of the Approval Petition, whereby, there was no stay orders from taking consequential steps on account of dismissal of the Approval Petition including reinstatement of the petitioner. Even then, for the reasons known to the Corporation, the second respondent was not reinstated. Therefore, on account of the fact that domestic enquiry was found to be not conducted in proper lines, thereby, on account of approval not being given by the petitioner Management even this petition which is filed challenging the reinstatement of the second respondent with 25% of backwages cannot be intervened. Hence, **W.P.No.20365 of 2012 deserves dismissal.**

20. In so far as W.P.No.34716 of 2006 is concerned, it is submitted by the Management that order of the labour Court in declining to grant approval is without any basis and as there was no violation of principles of natural justice, the labour Court has not properly verified the documents filed by the petitioner Management and the labour Court is incorrect while holding that



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the second respondent was entitled for wages of 30 or 31 days and that the labour Court has committed error in giving a finding that the mandatory provision under Section 33 (2) (b) of the Industrial Disputes Act was not complied with in respect of payment of one month wages.

21. I have gone through carefully the order passed by the authorities in Approval Petition No.146 of 2003 dated 12/2/2005. The labour Court has held that none of the documents filed by the disciplinary authority were not filed before the labour Court, thereby, the labour Court felt that there was no occasion for the petitioner to verify prima facie case of the petitioner Management. It is also held before the lower Court that the petitioner Management has paid Rs.4394/- at the time of dismissing the second respondent. However, it gave a finding that no record is filed to show that the said wages was paid to the second respondent.

22. Considering the above, it is clear that the trial Court while considering mainly on the issue that wages as required would not be paid and the document relied upon by the petitioner Management before the



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disciplinary authority were not filed before the labour Court to consider the case of the petitioner Management has ultimately declined to give an approval for the action taken by the petitioner against the second respondent.

23. It is a settled legal position that non payment of one month wages at the time of dismissal amounts to violation of principles of natural justice and thereby, the proceedings before the disciplinary authority are being vitiated. Moreover, the petitioner Management also failed to convince this Court in respect of the writ petitioner as well. Therefore, the order of the labour Court declining to grant permission in the Approval Petition cannot be interfered with. Accordingly, **W.P.No.34716 of 2006 deserves dismissal.**

24. In the result, **both the writ petitions are dismissed.** No costs. Consequently, the connected Miscellaneous Petitions are closed.

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vca/mvs.

Index : Yes/No
Neutral Citation : Yes/No

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(Conciliation) DMS compound,
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Pre-delivery common order made in
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W.M.P.Nos.1 of 2006 and 2012

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