



W.P.No.19687 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.07.2024

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.19687 of 2015

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M.P. No. 1 of 2015

The Management
Tamil Nadu State Transport Corporation Ltd.,
No.12, Ramakrishna Road,
Salem – 07,
Rep by its General Manager.

...Petitioner

Vs.

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

2.D.Muruganantham

...Respondents



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Prayer: Writ Petition is filed under Article 226 to issue a Writ of Certiorari to call for the records of the 1st respondent made in approval petition A.P.No.84 of 2011 dated 14.08.2013 and quash the same as illegal.

For Petitioner : Mr. M.Aswin

For Respondent 1: Court

For Respondent 2: Mr. R.Dilli Kumar.

ORDER

The Writ Petition has been filed by the petitioner Corporation challenging the dismissal of their Approval Petition filed by them in A.P.No.84 of 2011 by order of the 1st respondent dated 14.08.2013. This Approval Petition has been filed under Section 33 (2) (b) of the Industrial Dispute Act.



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2. The petitioner corporation had initiated disciplinary proceedings against the 2nd respondent who was working as a conductor at Erumapalayam II branch of petitioner's corporation. The charge against the 2nd respondent was that he absented from duty without prior permission and intimation. After affording sufficient opportunity to the 2nd respondent, the Enquiry Officer proceeded against the 2nd respondent setting him an ex parte. Thereafter, consequent to the examination of the witnesses and marking of documents, the Enquiry Officer had held that the charges proved.

3. The petitioner management had sent a memo dated 09.11.2010 calling upon the 2nd respondent to submit his remarks to the enquiry report. Though the same was received by the 2nd respondent there was no reply to it. The second show cause notice dated 01.12.2010 was issued to the 2nd respondent calling upon him to submit his explanation for the provisional conclusion of punishment of dismissal. The said notice was also received by the 2nd respondent, however there was no



reply, constraining the petitioner management to dismiss the 2nd respondent with a month's salary by a dismissal order dated 28.02.2011.

4. Since there was a wage dispute pending on the file of the 1st respondent, the petitioner corporation had moved the 1st respondent for approving the punishment. The petitioner would submit that even thereafter there has been no explanation for the absence.

5. The 1st respondent had proceeded to pass an order dated 28.02.2011 holding that the domestic enquiry conducted by the petitioner management did not follow the principles of Natural Justice as notice was not served on the 2nd respondent. Therefore, the impugned order came to be passed.

6. The learned counsel who appears for the petitioner would submit that they were under the impression that since the 1st respondent was merely approving order of dismissal and the scope of enquiry in



such instances are restricted, they had not produced the documents to show proof about the service of notice upon the 2nd respondent.

7. Today, xerox copies of the acknowledgment cards have been produced before this Court. The learned counsel would therefore seek an opportunity to demonstrate that the 2nd respondent despite notice has failed to appear for the domestic enquiry.

8. The learned counsel for the 2nd respondent would submit that the petitioner has failed to produce these documents and the proceedings have been pending ever since 2010.

9. Heard the learned counsels and perused the records.

10. Admittedly, a perusal of the documents now filed before this Court indicates that the enquiry notice has been issued to the 2nd respondent and he has received the same and has chosen not to appear before the Enquiry Officer. Therefore, since the dismissal was only on



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the ground that no notice was given to the 2nd respondent equity demands that it would be appropriate to allow the Writ Petition.

11. Accordingly, the Writ Petition is allowed and the order of the 1st respondent in A.P.No.84 of 2011 is set aside. The matter is remitted back to the 1st respondent / Special Deputy Commissioner of Labour, DMS Compound, Anna Salai, Chennai, for fresh consideration of A.P.No.84 of 2011. Consequently, the connected Miscellaneous Petition is closed. No costs.

12.07.2024

Index : Yes/No
Internet : Yes/No
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To

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



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P.T. ASHA, J,

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