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W.A.No.1171 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**Writ Appeal No.1171 of 2024 &
CMP.No.8460 of 2024**

The Management,
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
12, Ramakrishna Road,
Salem 636 007

... Appellant

Vs.

1. D. Jambu,
S/o. Dhanapal,
No.1/8-1, Kovil Street,
Kolathur Post, Mettur Taluk,
Salem District.
2. The Special Deputy Commissioner
of Labour, Chennai.

.... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the order dated 07.09.2023 in W.P.No.15525 of 2018 passed by the learned Single Judge.



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For Appellant : Mr. M.Aswin
For Respondents : Mr. T. Chezhan
AGP for R2
R1-Notice Served
No appearance

JUDGMENT

(Order of the Court was made by J.NISHA BANU, J.)

This Writ Appeal is preferred by the appellant/Transport Corporation challenging the order dated 07.09.2023 passed in W.P.No.15525 of 2018, in and by which, the learned Single Judge disposed of the writ petition by passing the following order;

“ The petitioner Corporation is directed to provide an alternate employment to the first respondent within a period of four weeks from the date of receipt of a copy of this order;

2. The first respondent is entitled for continuity of service and other terminal benefits and he is not entitled for any backwages for his dismissal period.”



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2. The appellant/Management has filed a writ petition seeking to quash the order dated 03.07.2017 passed by the 2nd respondent in A.P.No.21 of 2014 and for further direction to the 2nd respondent to approve the order of the appellant dated 26.02.2014 dismissing the 1st respondent from service.

3. In the writ petition, it was averred that the 1st respondent/employee was appointed as Driver in the appellant/Transport Corporation on 26.09.1991. Due to his unauthorised absence from 02.03.2013, he was issued with a memo dated 28.03.2013 calling him to offer his explanation.

3.1. On receipt of memo, the 1st respondent/employee gave his explanation stating that during health check up held on 05.02.2013, it was found that his left eye has blurred vision and consequently on 10.02.2013, his father also expired and due to the aforesaid reasons, he was not able to report to duty from 02.03.2013. In his explanation, he also requested for granting alternate work other than driver.

3.2 The appellant/Transport Corporation, being dissatisfied with the



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explanation, called upon him for enquiry and after conducting enquiry, it issued a show cause notice to offer his explanation as to why the punishment of dismissal should not be imposed on him based on the enquiry report.

3.3. Subsequently, based on the enquiry report, by order dated 26.02.2021, he was dismissed from service by following due process of law.

3.4. Thereafter, the appellant/Transport Corporation filed approval petition in A.P.No.21 of 2014 before the Special Deputy Commissioner of Labour, Chennai/2nd respondent under section 33(2)(b) of the Industrial Disputes Act, 1947 seeking to approve the dismissal of the 1st respondent/employee from service.

3.5. The 2nd respondent vide his order dated 03.07.2017 refused to give approval holding that enquiry was not conducted in accordance with standing orders and prima facie case has not been established on legally acceptable evidence.

3.6 Aggrieved against such refusal, the appellant/Transport



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Corporation filed a writ petition seeking to quash the order passed by the 2nd respondent in A.P.No.21 of 2014 and for further direction to the 2nd respondent to approve the order of the appellant/Transport Corporation dated 26.02.2014.

3.7. The Writ Court, finding that the termination of the first respondent is not sustainable and the order of the Labour Court is in consonance with the decision of the Apex Court in the case of **Lalla Ram**, disposed of the writ petition with the above directions.

3.8. Feeling dissatisfied with the order passed by the learned Single Judge, the appellant/Transport Corporation has preferred the present Writ Appeal.

4. The learned counsel for the appellant/Transport Corporation submitted that the 2nd respondent has erroneously rejected the approval petition by holding that prima facie case against the employee was not established by examining legally acceptable evidence. Both the Courts below have failed to observe that the 2nd respondent have not filed any



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document to substantiate the reason for his leave through materials or evidence. The first respondent was absented from duty without leave letter from 02.03.2013 to 28.03.2013 and as the said act was in violation of Section 24(6)(A) of the Standing Order of the appellant/Transport Corporation, he was dismissed from service based on the enquiry report of the enquiry officer.

5. He further submitted that though a show cause notice was issued to 1st respondent seeking explanation as to why the punishment of dismissal should not be imposed on him based on the enquiry report, he did not even respond for the same. Previously, the 1st respondent underwent various punishments for his misconduct on several occasions, hence, the appellant/Transport Corporation, considering the interest of the management and the loss incurred to it, dismissed him from service, pursuant to which, his one month salary was disbursed. The 1st respondent, in order to evade dismissal from service, has produced the medical certificate as if he is having blurred vision.



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6. It is his further submission that the decision taken by the Labour Court is contrary to the decision of the Hon'ble Apex Court reported in the case of ***Lalla Ram Vs. Management of DCM Chemical Works Ltd., and others***. The reason for rejection of the approval by the approval authority and the reason assigned by the writ court for the alternate employment is untenable. Therefore he prayed for allowing the Writ Appeal.

7. Per contra, the learned counsel for the 2nd respondent/employee submitted that the order passed by the Writ Court is just and proper and hence the same need not be interfered with. Therefore, he prayed for dismissal of the Writ Appeal.

8. Heard the submissions of the learned counsel for the appellant and the learned counsel appearing for the 2nd respondent and perused the entire materials available on record. Though the 1st respondent/employee is served, there is no representation for him either in person or through counsel today when the matter is called.



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9. According to the appellant/Transport Corporation, the 1st respondent has not filed any document to substantiate that he has obtained leave by following procedures. Perusal of Ex.R-3 medical certificate would go to show that on account of damage in his eye nerve, there is defect in eye sight and he is unfit to work as a Driver. On the basis of the medical certificate, the 1st respondent/employee made a representation to the appellant/Transport Corporation seeking alternate employment. Admittedly, the appellant/Transport Corporation did not examine the Doctor who issued medical certificate stating that he is unfit to continue as driver and no document was filed by the appellant/Transport Corporation for accepting Ex.R.3 as false document. In the circumstances, it is apparent that due to his inability to continue as Driver, he was absented from duty. The appellant/Transport Corporation, without affording him an opportunity of alternate employment, proceeded to dismiss him from service permanently. The Labour Court, after citing the judgment of this Court in the case of ***TNSTC Vs. Joint Commissioner of Labour and another (2011-LLJ-646 (Mad)*** has rightly observed that punishment of dismissal of the 1st



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respondent from service for his unauthorised absence is too harsh.

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10. Perusal of Ex.P.6 would go to show that during the course of enquiry proceedings, the 1st respondent was not cross examined by the Branch Manager of the Transport Corporation, but by the enquiry officer concerned. Hence, the Labour Court came to the conclusion that domestic enquiry was not conducted in accordance with principles of natural justice and *prima facie* case had not been established on legally acceptable evidence. Since the appellant/Corporation had failed to establish even a *prima facie* legal case necessitating dismissal of the employee, the Approving Authority /2nd respondent rightly concluded that the *prima facie* case had not been established on legally acceptable evidence.

11. Further, the appellant/Transport Corporation has not produced any document relating to punishments awarded regarding the alleged misconduct of the 1st respondent during his previous employment. In the circumstances, this court upholds that the punishment imposed on the 2nd



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respondent is excessive. In such a view of the matter, this Court is of the opinion that rejection of approval petition is in consonance with the decision of the Hon'ble Apex Court in the case of ***Lalla Ram Vs. Management of DCM Chemical Works Ltd., and others***, reported in ***MANU/SC/0268/1978***. The order of rejection of approval petition by the Labour Court, confirmed by the Writ Court does not warrant interference.

12. For the foregoing discussions, We do not find any infirmity or illegality in the order passed by the learned Single Judge affirming the order of rejection passed by the Labour Court. The Writ Appeal is devoid of merits and accordingly, the same stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

[J.N.B.,J.] [P.D.B.,J.]
09.07.2024

Index: yes/no
Internet:yes/no
msr



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