



WEB COPY



W.P.No.22964 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM:

THE HONOURABLE DR.JUSTICE D. NAGARJUN

W.P.No.22964 of 2015

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd/. ... Petitioner

vs.

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

2. V. Manickam ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records passed by the 1st respondent in A.P. No.349 of 2011 dated 21.05.2014 and to quash the same and against the provisions of the Industrial Disputes Act 1947.

For Petitioner : Mr. R. Babu

For Respondents : Labour [for R1]
Ms. S. Girija [for R2].



W.P.No.22964 of 2015

JUDGMENT

WEB COPY

(Judgment of the Court was made by DR. D. NAGARJUN, J.)

This Writ petition has been filed seeking Writ of Certiorari questioning the order passed in Approval Petition in A.P. No.349 of 2011 dated 25.11.2014 passed by the learned Deputy Commissioner of Labour, the 1st respondent herein.

2. The 2nd respondent was working as helper at Namakkal Branch of the petitioner's Tamil Nadu State Transport Corporation (Salem) Limited. He failed to report his duty continuously from 04.06.2010 unauthorizedly. As the same is a grave misconduct as per Clause 16(E) of the standing orders of the petitioner corporation, a charge memo was issued on 16.07.2010. The 2nd respondent has not submitted his explanation. An enquiry officer was appointed to enquire the charges. The details of appointment of enquiry officer was also communicated to the 2nd respondent. The enquiry notice was also sent on 02.03.2011 and it was received by the 2nd respondent. He has participated in the enquiry on 10.03.2011. He had also cross examined the management witnesses and perused the documents relied upon by the management.



W.P.No.22964 of 2015

WEB COPY

3. On conclusion of enquiry, the enquiry officer submitted report dated 10.03.2011 holding that the charges leveled against the 2nd respondent were proved. A memo was sent to the 2nd respondent seeking remarks on the enquiry report. However, there was no response from the 2nd respondent. Another notice was sent dated 19.07.2011 seeking explanation for provisional conclusion of punishment of dismissal in respect of the enquiry report. It was also received by the 2nd respondent. However, reply was not given. Thereafter, the petitioner's management has passed orders dismissing the 2nd respondent from service with effect from 02.09.2011.

4. The petitioner management has sought for approval of the dismissal of the 2nd respondent as per Section 33(2)(b) of the Industrial Disputes Act, 1947 and the Deputy Commissioner of Labour, the 1st respondent, on going through the records, has passed orders declining to approve the dismissal order. Aggrieved by the same, this Writ petition is filed.

5. It is submitted by the learned counsel appearing for the petitioner



W.P.No.22964 of 2015

WEB COPY

that the Deputy Commissioner of Labour, the 1st respondent, has formulated 5 points for consideration on which he has decided three of them in favour of the management including that the principles of natural justice were followed in the course of enquiry one month salary was given and that the approval application was filed simultaneously.

6. It is further submitted by the learned counsel for the petitioner that the principles of justice have been followed by giving opportunity to the 2nd respondent to participate in the enquiry and permitted the 2nd respondent to peruse all the documents in the course of enquiry and that one month salary was already paid as required and the petitioner management has approached the Deputy Commissioner of Labour/1st respondent under Section 33(2)(b) of Industrial Disputes Act without any delay. The learned counsel for the petitioner further submitted that the 2nd respondent has committed disobedience by absenting himself unauthorizedly on 27 previous occasions. On that ground, all the requirements under Section 33(2)(b) of the Industrial Disputes Act have been fulfilled, the conclusion of the 1st respondent declining to grant approval is erroneous.



W.P.No.22964 of 2015

WEB COPY

6. The learned counsel appearing for the 2nd respondent submitted that the principles of natural justice have not been followed though the petitioner was allowed to participate in the enquiry, requirements under Section 33(2)(b) of the Industrial Disputes Act have not been followed. It is further submitted that there is no record to prove that on earlier 27 occasions, the 2nd respondent was absenting himself unauthorizedly and thereby the 1st respondent has rightly passed orders.

7. Heard both sides. Perused all the records.

8. The short point that falls for consideration of this Court is as per the decision of the Hon'ble Apex Court in ***Lalla Ram vs. DCM Chemical Works reported in AIR 1978 (C) 1004***, whether the enquiry was properly conducted.

9. On going through the orders passed by the 1st respondent, it is clear that the 1st respondent has gone through meticulously the proceedings of the enquiry conducted by the enquiry officer and observed that sufficient opportunity has not been given to the 2nd respondent and finally concluded



W.P.No.22964 of 2015

WEB COPY

that principles of natural justice have not been followed. The enquiry officer was expected to give opportunity to the 2nd respondent to cross examine the management witnesses, to peruse the documents filed by the management and permit the 2nd respondent to examine himself and submit his side documents if any. As per the records and observations made by the 1st respondent the opportunity of cross examining the management witnesses has not been given to the petitioner, which is vital in the part of enquiry. The enquiry officer has not followed the basic principles of giving an opportunity to the 2nd respondent to defend himself against charges levelled against him. Thereby, the report of the 1st respondent cannot be said to be erroneous.

10. The other requirement of giving one month salary and filing application under Section 33(2)(b) was made on time and thereby on these counts, the petitioner department cannot be found fault with.

11. This Court can interfere with the findings of the 1st respondent only in case if the orders passed by the 1st respondent are patently perverse and findings are without any evidence. The 1st respondent has passed a



W.P.No.22964 of 2015

WEB COPY

reasoned order after going through the records of the enquiry officer, thereby, the orders passed by the 1st respondent cannot be interfered with.

13. Accordingly, this Writ petition is dismissed. There shall be no order as to costs.

02.02.2024

mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

DR. D. NAGARJUN, J.,



WEB COPY



W.P.No.22964 of 2015

(mjs)

To

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

W.P.No.22964 of 2015

02.02.2024