



W.A.No.1212 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM

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

**Writ Appeal No.1212 of 2024 &
CMP.No.8836 of 2024**

M. Vinoth

... Appellant

Vs.

1. The Management,
Tamil Nadu State Transport
Corporation (VPM) Ltd.,
Kancheepuram Region,
Chennai Bangaluru Highway,
Kancheepuram District 631 552.
2. The Special Joint Commissioner
of Labour, D.M.S.Compound,
Chennai 600 006.

.... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent praying to set aside the order passed in W.P.No.23211 of 2023, dated 26.09.2023.

For Appellant : Mr. N. Ishak

For Respondent : Mr.Aswin, Standing Counsel for R1
Mr.V. Ravi, Spl. Govt Pleader for R2

JUDGMENT



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

This Writ Appeal is preferred by the appellant/employee challenging the order dated 26.09.2023 passed in W.P.No.23211 of 2023, in and by which, the learned Single Judge allowed the writ petition by quashing the order passed by the 2nd respondent in Approval Petition made in A.P.No.228 of 2020, dated 12.12.2022.

2. By the order impugned, the learned Single Judge while allowing the Writ Petition, at para 13, has *inter-alia* observed as follows;

“13. In the case on hand, from the discussion above, it implicitly transpires that not only the enquiry was held in a fair and proper manner, but the workman was provided with opportunity to put forth his case and upon appreciation of the materials, the report has been given by the enquiry officer, which has been accepted and acted upon by the disciplinary authority. Further, proviso to Section 33(2)(b)



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also having been complied with, necessarily in the absence of any dispute, relating to the dismissal or discharge or termination of the workman, the approval petition ought to have been allowed by the Labour Court. But on erroneous reasoning the approval petition has been rejected, which necessarily requires the interference at the hands of this Court. “

3. According to the appellant, the appellant joined the services of the 1st respondent/Corporation as conductor on 03.07.2024. Due to chronic back pain combined with jaundice, he was unable to attend the duty from 24.03.2018, as he was advised to take bed rest. Upon recovery from illness, the appellant reported before the Branch Manager and through his written representation dated 26.10.2018, he requested him to permit him for joining duty. After receiving the letter, the Branch Manager told him that he would be permitted to join duty after due check up by the Medical Board and in this regard, a letter would be sent by the Head Office to appellant's residential address. But to his shock, a charge memo dated 25.06.2018 was



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served on him by the 1st respondent alleging that he is absented from duty unauthorisedly from 24.03.2018.

3.2. Thereafter, a domestic enquiry was conducted on 20.12.2019. The enquiry officer furnished his enquiry report. Based on the enquiry report, the appellant was dismissed by the 1st respondent vide his proceedings dated 10.12.2020. Followed by which, an approval petition in A.P.No.228 of 2020 was filed before the 2nd respondent under section 33(2)(b) of Industrial Dispute Act, 1947 for approval of such dismissal.

3.3. The 2nd respondent/Special Joint Commissioner of Labour, after framing issues and after considering the arguments of both sides, vide his order dated 12.12.2022, refused to give approval to the order of dismissal from service. The 2nd respondent held that prima facie case has not been established on legally acceptable evidence and there was a shortfall in payment of one month wages.

3.4. Challenging the order passed in A.P.No.228 of 2020, dated 12.12.2022, the 1st respondent/Corporation preferred a writ petition in W.P.No.23211 of 2023. The learned Single Judge has quashed the order passed in A.P.No.228 of 2020, by allowing the writ petition, holding that



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enquiry was conducted in a fair and proper manner and proviso to section 33 (2) (b) of the Industrial Dispute Act was complied with.

3.5. Aggrieved by the order of the learned Single Judge, the appellant/employee has filed the present Writ Appeal.

4. The learned counsel for the appellant/employee submitted that the 2nd respondent has rightly rejected the approval petition in A.P.No.228 of 2020 by holding that prima facie case against the workman was not established by examining legally acceptable evidence. The learned Single Judge did not appreciate the said findings and that one month salary was not fully paid to the appellant/employee along with dismissal order as required by the Industrial Disputes Act 1947. Though the appellant/employee approached the 1st respondent for duty permission, in between the disputed absent period, he was issued with only charge sheet. On one hand, the appellant/workman was reinstated into service by the 1st respondent on account of refusal of approval by the authority under section 33(2)(b) of the Industrial Disputes Act, but on the other hand, the order is challenged contra to the absolute reinstatement order. Therefore he prayed



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for allowing the Writ Appeal.

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5. Per contra, the learned counsel for the 1st respondent submitted that the appellant/employee unauthorisedly absented himself for duty from 24.03.2018 and for such unauthorised absence, he did not produce any evidence or medical records supporting the reason for his absence and the said fact was also accepted by the appellant in his cross examination before the enquiry officer. Hence, disciplinary proceedings were initiated. After due enquiry and based on the enquiry report, the appellant was rightly dismissed from service.

5.2 It is the contention of the appellant/employee that one month wage is not paid completely during dismissal as per section 33(2)(b) of Industrial Disputes Act. By filing a rough calculation-Ex.W1, the appellant calculated the basis salary at Rs.18150, which is Rs.5/- excess when compared to the salary of Rs.18100/- eligible for him. The addition of Rs.50/- in his basic pay as per rough calculation is baseless and by adding Rs.50/- in his basic pay, he himself roughly calculated DA for Rs.3086/- instead of Rs.3077/- and further he added a sum of Rs.12/- as refill expenses



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in rough calculation memo, to which, he is not entitled to. In his rough calculation the appellant claims deficiency of Rs.72/- and he has to substantially prove his case with authenticated documents and not by rough calculation and he fails to discuss how Rs.72/- is shortfall and in what way it is shortfall and whether the basic and DA is calculated properly. Having regard to the same, no discussion was made by the authority and the contention of appellant/employee was accepted in whole without substantial discussion. The 1st respondent by way of additional typed set filed the salary slip of the appellant/employee of November 2020 before the Court to establish that the rough manual calculation made by the workman in Ex.W1 is wrong and Rs.50/- was added on his own to play fraud on Court. Thus the writ court in para 9 of the order observed that the authority erred in finding and allowed the writ petition on other terms. Therefore, the order of dismissal imposed on the appellant/employee is correct, however, the 2nd respondent /approval authority rejected the approval petition pointing out that the attendance register has not been marked and the person who maintains the attendance register has not been examined and the authority to whom the appellant/employee is alleged to have orally informed about

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his absence has not been examined. Such rejection is contrary to 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*. Therefore, he prayed for dismissal of this Writ Appeal.

6. Heard the rival contentions of both sides and perused the materials available on record.

7. Admittedly, the appellant/employee was unauthorisedly absented from reporting duty since 24.03.2018 and for such absence, disciplinary proceedings were initiated by issuing charge memo on 25.06.2018, followed by which, enquiry was conducted and an enquiry report was also issued by the Enquiry Officer holding that the charges has been proved against the appellant/employee. Based on the enquiry, punishment of dismissal from service was imposed on the appellant and for approval of such dismissal, Approval Petition was filed before the 2nd respondent. The 2nd respondent



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holding that *prima facie* case had not been established on legally acceptable evidence since the Branch Manager, to whom the workman had orally informed about his leave has not been examined is fatal to the case of 1st respondent/corporation. Besides that, the records relating to the attendance of the appellant/employee was not marked. The one month salary was not completely paid to the appellant/employee. It appears that the 1st respondent has reinstated the appellant/employee in service as conductor with continuity of service after receipt of approval refusal order , vide Memo No.127/P3/TNSTC/2023, dated 10.05.2023.

8. The entire case of the 1st respondent Corporation rests on the report submitted by the Enquiry Officer, who failed to examine the Branch Manager, to whom the leave intimation said to have been given by the employee and also the person who is maintaining the attendance register relating to the employee. The enquiry officer also failed to mark the attendance records relating to the employee. Since the 1st respondent/Corporation had failed to establish even a *prima facie* legal case



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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. In such a view of the matter, this Court affirms the view of the Approving Authority rejecting the approval petition.

9. The second ground taken by the approving authority to dismiss the approval petition is that one month salary was not completely paid to the employee. The learned Single Judge held that the amount shortfallen is only to the tune of Rs.72/- and the same did not amount to non-compliance of Section 33(2)(b) of the Act.

10. In the course of arguments, the 1st respondent/corporation submitted that the shortfall of Rs.72/- was paid to the appellant/employee by issuing him a cheque for Rs.72/- through a communication dated 25.02.2023.



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11. Here, it is beneficial to extract the provisions of Section 33(2)(B) of the Industrial Disputes Act, which reads as under;

“33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.-

(2) During the pendency of any such proceeding in respect of an Industrial Dispute, the Employer may, in accordance with the Standing Orders applicable to a Workman concerned in such dispute or where there are no such Standing Orders, in accordance with the terms of the contract, whether express or implied, between him and the Workman,-

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that Workman:

Provided that no such Workman shall be discharged or dismissed, unless he has been paid wages for one month and an Application has been made by the Employer to the Authority before which the proceeding is pending for approval of the action taken by the Employer.”

From the above, it is inferred that it is the mandatory requirement of the employer to pay one month full last drawn wage to the employee and as such the provision of section 33(2)(b) of the Industrial Disputes Act was not properly complied with. Thus, the Special Joint Commissioner of Labour is right in coming to the conclusion that the full last drawn wages not paid to



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the Employee.

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12. In view of the above discussions, We are of the opinion that the dismissal order of the learned Single Judge suffers from infirmity for want of non-compliance of provisions of Section 33(2)(b) of the Industrial Disputes Act. The Writ Appeal deserves to be allowed and accordingly the same stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

[J.N.B.,J.] [P.D.B.,J.]
20.06.2024

Index: yes/no
Internet:yes/no
msr

J. NISHA BANU, J.
&
P.DHANABAL, J.

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