



W.P.No.10960 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2024

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THE HONOURABLE MRS.JUSTICE **N.MALA**

W.P.No.10960 of 2019
and
W.M.P.No.11396 of 2019

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Kancheepuram Division,
Ponnerikarai,
Chennai – Bangaluru National High Road,
Kancheepuram – 631 552. ... Petitioner

Vs

1.The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai – 6.

2.E.Ekambaram ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the order dated 18.07.2017 made in A.P.No.18 of 2014 on the file of the Special Deputy Commissioner of Labour, Chennai and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.



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For Petitioner : Mr.M.Aswin

For Respondents : Mr.P.Sanjay Gandhi
Government Advocate [R1]

Mr.S.Ravi [R2]

ORDER

This Writ petition is filed by the petitioner challenging the order dated 18.07.2017 made in A.P.No.18 of 2014 on the file of the Special Deputy Commissioner of Labour, Chennai.

2. The second respondent joined the petitioner/Transport Corporation as a Conductor on 26.09.1991 and absented from duty from 27.09.2011 without any intimation. Therefore, the second respondent was issued with a charge memo dated 17.05.2013 for the misconduct of unauthorised absence. The second respondent submitted his reply and as it was found unsatisfactory, an enquiry was conducted. The Enquiry Officer submitted his report confirming that the charges were proved. Thereafter, the copy of the enquiry report was furnished to the second respondent, but he did not reply to the same. On 26.09.2013, second show



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cause notice was issued calling for explanation from the second respondent for the proposed punishment of dismissal from service. The second respondent did not reply to the second show cause notice also. On 11.02.2014, the order of dismissal was passed and an approval petition was filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'the I.D. Act') before the Special Deputy Commissioner of Labour, first respondent herein. A cheque for one month wages as mandated under Section 33(2)(b) of the I.D. Act was sent to the second respondent. The first respondent vide impugned order dismissed the approval petition on 18.07.2017 on the ground of delay. Aggrieved by the rejection of the approval petition, the Transport Corporation has filed the above writ petition.

3. The learned counsel for the petitioner submitted that the order of dismissal was passed on 11.02.2014, one month wages was also paid to the second respondent and application for approval was sent on the same day to the first respondent, therefore, according to the learned counsel, there was no violation of the provisions of Section 33(2)(b) of the I.D. Act.



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4. On the other hand, the learned counsel appearing for the second respondent by relying on the judgment of the Division Bench of this Court in the case of ***V.Palani Vs. The Tamil Nadu State Transport Corporation (Villupuram) Ltd., & Anr.*** submitted that as the application was not filed simultaneously with the order of dismissal, there was violation of Section 33(2)(b) of the I.D. Act and therefore, the first respondent was justified in rejecting the approval application.

5. I have heard both the learned counsels and I have perused the materials on record.

6. The Labour Court on the issues No.1 and 2 relating to the fairness in the conduct of enquiry and on establishment of prima facie case, held that as the enquiry proceedings were not filed, no finding could be given on the said aspects. On the issues No.3 and 4 with regard to compliance of Section 33(2)(b) of the I.D. Act, the Labour Court found that there was non-compliance of Section 33(2)(b) of the I.D. Act as the application was not filed simultaneously or within reasonable time of the



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order of dismissal dated 11.02.2014.

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7. Though the learned counsel for the petitioner made submissions on the merits of the case, I am of the view that it is not necessary to go into the merits of the case because I find that there is violation of Section 33(2)(b) of the I.D. Act.

8. It is seen that the dismissal order was passed on 11.02.2014. According to the petitioner, one month wages was paid to the second respondent and the approval application was also sent on the same day to the first respondent. There is absolutely no evidence to support the contention of the petitioner that the application was sent on 11.02.2014. In the absence of any evidence to show that the approval application was sent simultaneously or within reasonable time, I find no reason to interfere with the findings of fact of the first respondent that the application was received only on 19.02.2014 with a delay of eight days. As there is violation of the proviso to Section 33(2)(b) of the I.D. Act, the first respondent was justified in rejecting the approval application. I am fortified in my view by the judgment of the Hon'ble Supreme Court in



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the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***1978 (3) SCC 1***, which was followed by the Division Bench of this Court in the case of ***V.Palani Vs. The Tamil Nadu State Transport Corporation (Villupuram) Ltd & Anr.*** I am therefore of the view that the writ petition sans merit and hence the same is dismissed.

9. It is seen that the second respondent superannuated on 31.05.2017. As the matter is hanging fire since 2014 at the approval stage, I am of the view that a direction should be issued to the petitioner/Transport Corporation to settle the retirement benefits to the second respondent forthwith. Hence, a direction is issued to the petitioner/Transport Corporation to disburse all the retirement benefits, including the pensionary benefits to the second respondent herein from the date of dismissal i.e., from 11.02.2014, till the date of his superannuation i.e., to 31.05.2017, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

26.02.2024



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Index : Yes / No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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To

The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai – 6.



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N.MALA,J.,

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