



W.P.No.23354 of 2019
and W.M.P.No.19402 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

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THE HONOURABLE MRS. JUSTICE N.MALA

WP No.23354 of 2019
and
WMP No.19402 of 2022

The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Region,
Kancheepuram - 631 552.

... Petitioner

Vs.

1.R.Janaki Raman

2.The Special Deputy Commissioner of Labour,
D.M.S.Compound,
Chennai.

... 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 of the second respondent made in AP No.90/2014 dated 14.09.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.



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For Petitioner : Mr.M.Aswin, Standing Counsel
For R1 : Mr.S.Ravi
For R2 : Mr.P.Sanjay Gandhi,
Government Advocate

ORDER

The writ petitioner is the Tamil Nadu State Transport Corporation (Villupuram) Limited and will referred to as the petitioner Corporation. The first respondent is the workman and will be referred to as the workman. The workman was employed in the petitioner Corporation. As the workman was unauthorisedly absent from 08.09.2012 to 04.09.2013, a Charge memo was issued. Thereafter, he joined duty on 05.09.2013. From 15.11.2023 till the date of final order without any prior permission the workman remained absent. Therefore, the workman was removed from service by the petitioner Corporation for the misconduct of unauthorised absence under Rule 24(6) of the Standing Orders. Disciplinary action was taken and it was concluded that the charges were proved. Hence, the petitioner Corporation passed an order of dismissal against the workman. One month salary of Rs.16,785/- was



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paid and also simultaneously an approval application was filed seeking approval as mandated under Section 33(2)(b) of the Industrial Disputes Act, 1947 from the second respondent Special Deputy Commissioner of Labour, Chennai. After considering the entire materials placed on record, the second respondent rejected the Approval Petition in A.P.No.90/2014 vide order dated 14.09.2017. Aggrieved by the impugned order, the present writ petition has been filed.

2.During the pendency of the writ petition, the workman filed a petition under Section 17 (B) of the Industrial Disputes Act, seeking last drawn wages. This Court directed the petitioner Corporation to pay the entire arrears of last drawn wages under Section 17(B) of the Act from 09.04.2019 and continue to pay the last drawn wages till the final disposal of the writ petition or reinstate the workman into service. The petitioner Corporation reinstated the workman into service on 21.04.2023 without prejudice to its right in the main writ petition.



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3.The learned counsel for the petitioner submits that the second respondent in mechanical fashion decided the case without considering the materials placed on record. He further submits that the enquiry proceedings and the consequent dismissal order was passed in accordance with law and in terms of Section 33(2)(b) of the Industrial Disputes Act, 1947 and therefore, the second respondent ought to have allowed the Approval Petition.

4.Per contra, the learned counsel for the workman submits that the second respondent found that the approval petition was not sent simultaneously with the termination order but was sent with a delay of seven days. He further submits that the approval petition was rightly rejected by the second respondent on the ground that it was not in conformity with Section 33(2)(b) of the Industrial Disputes Act. He also relied on the judgment of this Court in W.P.No.323/2022 dated 23.12.2022 in support of his case.



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5.Heard both counsels and perused the materials available on record.

6.It is not disputed that the workman was dismissed from service under Final order dated 23.04.2014 (Ex.P7). It is also not disputed that the order was served on the workman and the approval petition was filed before the second respondent on 30.04.2014 with a delay of seven days. As there was a delay of seven days in filing the approval petition, the second respondent rejected the same holding that it was in violation of Section 33(2)(b) of the Industrial Disputes Act. In this context, the judgment of the Hon'ble Division Bench of this Court in W.A.No.32/2022 dated 23.12.2022 relied on by the workman is worth reference. In the said case, it was held as follows :

“Even going by the observation made by the learned Single Judge, in the light of the pleadings made by the respondent Corporation, the dismissal order was issued on 04.02.2003 and the application for approval was filed on 13.02.2003. Rule 64 of the Tamil Nadu Industrial Dispute Rules, 1958,



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more particularly, Rule 64(2) would categorically state that the employer will have to make an application simultaneously. It does not mean that it should be made in a notion of a split second. In this case, admittedly, there is a delay of 8 days and no reason has been given for the delay”

7. In my view, the aforesaid judgment squarely applies to the facts of this case. In the case on hand, admittedly there is delay of seven days and absolutely there is no explanation for the same. Therefore, I am of the view that the rejection of the approval petition by the second respondent is justified and the same does not call for any interference. The order dated 14.09.2017 in A.P.No.90/2014 passed by the second respondent is confirmed. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

06.02.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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N.MALA, J.

mtl

To

The Special Deputy Commissioner of Labour,
D.M.S.Compound,
Chennai.

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