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W.P.No.17126 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.02.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.17126 of 2019

and

WMP.No.16682 & 32930 of 2019

The Management,
Tamil Nadu State Transport Corporation (Salem) Limited,
12, Ramakrishna Salai,
Salem-7.

...Petitioner

vs.

1.C.Shakthivel
2.The Special Joint Commissioner of Labour,
Chennai.

...Respondents

Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the Order dated 25.07.2018 passed by the Second Respondent in A.P.No.132 of 2014 and to quash the same.

For Petitioner : Mr.M.Aswin

For Respondents : M/s. S.Girija
for R1

Mr.P.Sanjaygandhi, Government Advocate
for R2



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ORDER

Writ petition is filed challenging the order passed in A.P.No.132 of 2014 dated 25.07.2018.

2. The Transport Corporation may be referred to as petitioner and workman is referred to as respondent.

3. The 1st respondent was employed as driver in the petitioner Corporation. On 27.10.2013 the petitioner was allotted duty in bus No.TN-30/N1248 from Salem to Madurai, whileso, due to negligence of the 1st respondent the accident occurred and the driver of the car and passenger in the car died in the accident. Therefore a charge memo was issued on 16.11.2013 to the 1st respondent for misconduct of causing accident due to negligence, lack of responsibility, causing loss of reputation and causing loss to the petitioner Corporation. The 1st respondent submitted his reply on 22.11.2013 and as the same was found to be unsatisfactory an enquiry was conducted. The enquiry officer submitted his report on 27.11.2013 holding



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that all the charges were proved. On receipt of the enquiry report, the petitioner provisionally concluded to dismiss the 1st respondent from service, therefore a second show cause notice dated 06.02.2014 was sent to the 1st respondent calling for his explanation on the proposed punishment. The 1st respondent replied on 28.02.2014 and as the same was found to be unsatisfactory, the dismissal order was passed on 11.06.2014. The 1st respondent was paid one month salary by cheque dated 05.06.2014 and the approval application was made under Section 33 (b)(2) of the I.D. Act. The Labour Court on an appreciation of the entire evidence on record dismissed the approval application, stating that there was delay of 8 days in sending the approval application and also that the respondent had failed to examine eye witness to the accident. Aggrieved by the Award passed by the Labour Court, the petitioner has filed the above writ petition.

4. The learned counsel for the petitioner submitted that the Labour



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Court failed to note that the principles laid down in the case of *Lalla Ram*

Vs. D.C.M Chemical Works Ltd. and another reported in AIR 1978 SC 1004,

were strictly followed and therefore the Labour Court erred in dismissing the approval application. The learned counsel further submitted that the Labour Court erred in thinking that the petitioner had not established a *prima facie* case because the eye witness was not examined and the criminal proceedings against the 1st respondent ended in acquittal. The learned counsel therefore submitted that the Award of the Labour Court was unsustainable and same deserved to be set aside.

5. The learned counsel for the respondent on the other hand submitted that the Labour Court was justified in rejecting the approval application, as the approval application was filed 8 days after the dismissal order. The learned counsel therefore submitted that the Award of the Labour Court did not call for any interference by this Court.

6. I have heard both the learned counsels and I have perused the



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materials placed on record.

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7. The short point to be decided in this writ petition is, as to whether the rejection of approval application of the Labour Court is justified or not.

8. It is seen that the 1st respondent was dismissed from service on 11.06.2014 under Ex.P.11 and the same was sent for approval by the 1st respondent only on 19.06.2014 sending with a delay of 8 days. The Hon'ble Supreme Court in *Lalla ram-Vs-Management of D.C.M Chemical Works Ltd., and another*, reported in 1978 3 SCC pg. 1, has clearly held that the provisions of Section 33(2)(b) have to be strictly followed. The Hon'ble Supreme Court stipulated 5 conditions to be considered while dealing with 33(2)(b) application. The 5th condition is relevant for the present case and it reads as follows:

“(v) Whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is



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pending for approval of the action taken by him."

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9.In view of the aforesaid legal position and in view of the fact that there was delay of 8 days in filing the approval application, the Labour Court in my view was justified in rejecting the approval application. I therefore find no merits in the writ petition and the same is dismissed. There shall be no order as to costs. Consequently connected WMP's are closed.

23.02.2024

dsn

Index:Yes/No

Speaking order:Yes/No

Neutral Citation:Yes/No



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To

1. The Management,
Tamil Nadu State Transport Corporation (Salem) Limited,
12, Ramakrishna Salai,
Salem-7.

2. The Special Joint Commissioner of Labour,
Chennai.



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N.MALA,J

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