



W.A.No.424 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM

**THE HONONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONONOURABLE MR. JUSTICE P.DHANABAL**

**W.A.No.424 of 2024
and
C.M.P.No.2871 of 2024**

The Management,
State Express Transport Corporation,
Tamil Nadu Limited,
Pallavan Salai,
Chennai-2
represented by its General Manager

... Appellant

Vs.

1. M.Pachaippan

2. The Special Deputy Commissioner of
Labour (Conciliation),
DMS Compound,
Chennai.

...Respondents

Writ Appeal filed under Clause 15 of the Letters patent against the
order passed by this Court in W.P.No.35598 of 2016 dated 31.01.2023.

For Appellant : Mr.Ilamvazhuthi
for Mr.S.Sivasubramani



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For Respondent/
Caveator : Mr.Malaikannu

J U D G M E N T

(The judgment of the Court was delivered by J.Nisha Banu,J.)

This Writ Appeal has been filed challenging the order passed by the learned Single Judge made in W.P.No.35598 of 2016 dated 31.01.2023, confirming the rejection order passed by the 2nd respondent/Authority in the approval petition filed by the Management seeking to approve the order of dismissal from service of the 1st respondent.

2. It is the case of the appellant/Management that the first respondent was removed from service by order dated 23.01.2012 for unauthorised absence. The approval petition filed before the 2nd respondent was rejected by order dated 09.05.2016 on the ground that the enquiry was against the principles of natural justice and that there was no prima facie case before the Inquiry Officer. The 1st respondent was absent from 01.06.2011 without any prior permission from the management. Without considering the gravity of long period of absence, the writ petition was also dismissed on the ground that the Management



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did not comply with conditions under Section 33(2)(b) of the I.D. Act and that the 2nd respondent had rejected the approval petition for non-filing of documents, however, the 1st respondent/employee himself had admitted his charges and fairness of the domestic enquiry. The employee/1st respondent was paid full one month wages and he is not entitled for any other allowances. Hence, the present writ petition.

3. It is the contention of the 1st respondent/employee that the 1st respondent did not admit the charges. The domestic enquiry was not properly conducted. Further, one month full salary was not paid to him. In respect of non-receipt of one month full salary, the Management did not deny the same or produced any documents to prove that they have paid full one month salary. Hence, there is violation of the procedure contemplated under Section 33(2) (B) of the Industrial Dispute Act, 1947, and the 2nd respondent/Authority has rightly rejected the approval petition and the same was also confirmed by the learned single Judge of this Court. Thus, the order passed by the learned single Judge need not be interfered with.



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4. Heard the learned counsels on either side and perused the materials available on record.

5. On perusal of the records, it is seen that the 2nd respondent/Authority has come to a conclusion that no prima facie case was made out and the principles of natural justice was violated in the inquiry. According to the employee/1st respondent, the domestic enquiry was not properly conducted and one month full salary was also not paid to him. Though the Management had marked Exs.A2 and A3 documents, viz., the charge memo and the enquiry findings, the 1st respondent has denied the receipt of the charge memo and the enquiry findings. It is the contention of the 1st respondent that the charge memo was sent to the wrong address and therefore, he was not able to give explanation to the charge memo. The management has also not properly proved the service of the charge memo and the enquiry report to the 1st respondent before the Authority. Thus, the principles of natural justice has been violated.

6. Insofar as one month wages as contemplated under Section

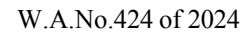


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33(2)(b) of the Industrial Disputes Act, 1947, is concerned, the Management has miserably failed to establish before the Authority/ 2nd respondent herein that full wages was paid to the 1st respondent/employee. Though the Management has stated that they have paid one full month salary to the 1st respondent/employee, the same was denied by the 1st respondent. The 1st respondent has stated that only less amount of Rs.900/- was paid by the Management. The dearness allowance, medical allowance, washing allowance and batta have not been paid to him. Further, no documents have been produced before the authority with regard to the payment of one month full wages or the quantum of one month wages. Thus, the 2nd respondent/Authority has rightly rejected the approval petition.

7. Apart from the above, even though the charge of unauthorised absence is proved, we are of the view that the punishment of removal from service is disproportionate to the alleged misconduct of unauthorised absence. The 2nd respondent/Authority has rightly rejected the approval petition on the ground that the inquiry was against the principles of natural justice and that there is no prima facie case before



8. In view of the above, the Writ Appeal stands dismissed. No
Consequently, connected miscellaneous petition is closed.

(J.N.B,J.) (P.D.B., J.)
01.04.2024

The Special Deputy Commissioner of
Labour (Conciliation),
DMS Compound,
Chennai.

J. NISHA BANU, J.
and
P.DHANABAL.J.



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