



W.P(MD)No.19112 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.19112 of 2024

and

W.M.P.(MD)No.17845 of 2024

The Management,
Tamil Nadu State Transport
Corporation (Madurai) Limited,
Madurai Region,
By-pass Road,
Madurai.

... Petitioner

Vs

1. The Special Joint Commissioner of Labour,
Office of the Commissioner of Labour,
Chennai - 6.

2. K Kannan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records on the files of the first respondent pertaining to its impugned order A.P.No.59 of 2015 dated 29.12.2023 and to quash the same as illegal.



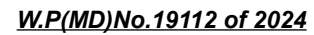
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For Petitioner : Mr.Herold Singh.S.C.
For R1 : Mr.G.Vairam Santhosh
Additional Government Pleader
For R2 : Mr.A.K.Thangavelu

ORDER

The petitioner Management Tamil Nadu State Transport Corporation, Madurai Region has filed this writ petition as against the orders passed by the first respondent in A.P.No.59 of 2015, dated 29.12.2023.

2.This approval petition in A.P.No.59 of 2015 was filed before the first respondent as required under Section 33(2)(b) of the Industrial Disputes Act seeking approval for the order of dismissal passed by the Management as against the second respondent. After conducting enquiry on the allegation that the second respondent Driver in the petitioner Corporation has obtained the job by producing bogus eighth standard certificate, the second respondent was dismissed by the Management by order, dated 26.03.2015. A similar application for approval was submitted by the Management under Section 33(2)(b) of the Act and the



3. Therefore, in view of the order passed by this Court in MD)No.23580 of 2018, the first respondent has considered the issue under Section 33(2)(b) of the Act and by the order impugned in this order, has once again rejected on the ground that the application filed under Section 33(2)(b) was not filed simultaneously.

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interim order. The second respondent has filed an application to vacate the interim order and therefore, the writ petition has been taken up for final disposal.

5.The learned Counsel for the writ petitioner submits that it is the second round of litigation on the order passed by the first respondent on the request made by the Management under Section 33(2)(b) of the Act. He further submits that while the first respondent considered the application in the year 2018 has framed the issue including the issue with regard to the date of application filed by the Management as required under Section 33(2)(b) of the Act and found that the application was filed in time simultaneously as required under the Act. However, the first respondent has rejected the earlier request only on the ground that the last drawn wages has not been paid as required under the Act. However, when it has been set aside and remanded back for fresh consideration, a new reason has been found by the first respondent to reject the request of the Management that the request for approval as required under Section 33(2)(b) of the Act has been made belatedly on 30.03.2015. He further submits that the authority has found that the enquiry conducted by the Management in a proper manner by affording all reasonable



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opportunities. The authority has also found that the second respondent has obtained the job only by producing a bogus certificate. The authority has also held that there is no unfair trade practice. However, the authority has found that the application was made belatedly on 30.03.2015. The order of dismissal was passed on 26.03.2015, which falls on Thursday. The request under Section 33(2)(b) of the Act was made by the Management on 27.03.2015 (Friday). The application was received by the first respondent on 30.03.2015 (Monday) since Saturdays and Sundays happened to be holidays. The learned Counsel for the writ petitioner has also produced the postal receipt for the application despatched by the Management to the first respondent on 27.03.2015.

6.The learned Counsel for the second respondent submits that the application needs to be filed simultaneously and there is no justification for the Management in filing the application on 30.03.2015. He further submits that the Management is having branches at Chennai and they ought to have filed the application on 26.03.2015 or on 27.03.2015. However, they have filed the application only on 30.03.2015 and therefore, there is no reason to interfere with the orders of the first respondent.



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7.This Court has considered the rival submissions made. The first respondent not justified in rejecting the application of the Management that it has been belatedly made on 30.03.2015. The first respondent authority under Section 33(2)(b) of the Act is expected to consider the application made for approval by considering the guidelines issued by the Hon'ble Supreme Court in the case of ***Lalla Ram Vs. DCM Chemical Works Limited*** reported in ***(1978) 3 SCC 1***. The Hon'ble Supreme Court has framed the guidelines as under:

"1.Whether the enquiry was conducted in accordance with the provision of law.

2.Whether any prima facie case was made out based on the evidence.

3.Whether the enquiry was conducted in accordance with the principles of natural justice.

4.Whether there is any unfair labour practice in passing the order.

5.Whether the last drawn salary of one month was paid by the Management at the time of dismissal.

6.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 pending for approval of the action taken."

8.In the earlier round of litigation, the application filed before the first respondent was rejected as if that the employer has not paid wages



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for one month to the employee. However, it was now rectified that the wages have been properly paid as required, to the employee. The first respondent has erred in passing an order as if that the application required to be filed by the Management has not been filed simultaneously or within a reasonable short time and it has been filed only on 30.03.2015. The very same authority, while deciding the earlier round of litigation has found that the requirement under Clause 5 of the Act as stated in the case of ***Lalla Ram Vs. DCM Chemical Works Limited*** has been complied with. However, in the present application, a reason has been invented by the authority, which has already been answered by the authority and has passed the impugned order.

9.This Court is not appreciating the manner, in which, the impugned order has been passed by the first respondent. As pointed out by the learned Counsel for the petitioner that the application was filed immediately next day of the date of dismissal (27.03.2015) through registered post, which was also received by the authority on the next working day i.e., on 30.03.2015. Therefore, the impugned order is liable to be set aside.



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10. Accordingly, the impugned order is set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet :Yes
Index :Yes/No
NCC :Yes/No

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