



W.P(MD)No.6838 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.6838 of 2017

and

W.M.P.(MD)No.5388 of 2017

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Rep. by its Managing Director,
Railway Station New Road,
Kumbakonam-612 001.

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
(Officer under Section 33(2)(b) of I.D.Act, 1947),
Chennai-600 006.

2.N.Murugesan (Conductor)

... 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 relating to the order passed by the 1st respondent dated 09.01.2015 in APP No.C1 212/2011 and quash the same.

For Petitioner : Mr.S.C.Herold Singh

For R1 : Mr.P.Thambidurai,
Government Advocate

For R2 : Mr.S.Govindan



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ORDER

The order of the 1st respondent dated 09.01.2015, refusing to accord approval for the dismissal of the 2nd respondent, is under challenge in this Writ Petition.

2.The learned counsel appearing for the petitioner would submit that the 2nd respondent was working as a Conductor in the petitioner's Transport Corporation. Since he was unauthorizedly absent for duty, a charge memo was issued to him and domestic enquiry was conducted, which ended in dismissal of the 2nd respondent. The said dismissal order dated 06.07.2011 along with a cheque for a sum of Rs.7,099/- towards one month wages, which is required under Section 33(2)(b) of the Industrial Dispute Act (hereinafter referred to as 'the ID Act), was served to the 2nd respondent. Thereafter, the petitioner submitted a petition for approval of the said dismissal order before the 1st respondent, who in turn, vide order dated 09.01.2015, refused to grant approval on the ground that departmental enquiry was not conducted by following the principles of natural justice and one month wages was not fully paid as the revision of wages under 12(3) settlement was not taken into account.



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3.He would further submit that the dismissal order was passed on 06.07.2011 and on the said date, the 2nd respondent was drawing a sum of Rs.7,099/- as a monthly salary and therefore, whatever the amount is liable to pay in terms of Section 33(2)(b) of the ID Act was paid to the 2nd respondent. However, the 1st respondent, while passing the impugned order, has taken into consideration G.O.(Ms)No.273, dated 03.10.2011 and G.O.(Ms)No.365, dated 08.10.2012 and come to a conclusion that the petitioner is supposed to have paid a sum of Rs.10,000/- as monthly salary, whereas, a sum of Rs.7,099/- was paid.

4.He would further submit that the dismissal order was passed on 06.07.2011, whereas, subsequent to G.O.(Ms)No.273, dated 03.10.2011, the salary was revised to Rs.10,000/-. Therefore, the 1st respondent has wrongly interpreted the provisions and the Government Order and come to the conclusion as if the petitioner failed to pay one month salary, which is mandatory for the dismissal of the employee in terms of Section 33(2)(b) of the ID Act.



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5.The learned Government Advocate appearing for the 1st respondent would fairly submit that the matter may be remanded back to the 1st respondent for fresh consideration.

6.I have given due consideration to the submissions made on either side and perused the materials available before this Court.

7.The issue to be decided in this Writ Petition is as to whether one month salary was paid in terms of Section 33(2)(b) of the ID Act to the 2nd respondent. There is no dispute with regard to the payment of salary for a sum of Rs.7,099/-, after the dismissal order dated 06.07.2011. Admittedly, at the time of dismissal, the 2nd respondent was drawing a sum of Rs.7,099/-. Subsequent to G.O.(Ms)No.273, dated 03.10.2011, the salary was revised to Rs.10,000/- prospectively. However, the 1st respondent has taken into consideration the salary of the dismissed employee as Rs.10,000/- at the time of dismissal ie., on 06.07.2011 and come to a wrong conclusion that the provision of Section 33(2)(b) of the ID Act has not been complied with and therefore, refused to grant approval for the dismissal order. The said conclusive decision of the 1st respondent is wrong. The salary of the dismissed employee should



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have been taken as salary for the payment of compensation as per his last drawn salary as on the date of dismissal.

8.In such view of the matter, this Court is of the considered view that the 1st respondent committed error on this aspect and therefore, the order impugned herein is liable to be set aside, accordingly, it is set aside and the matter is remitted back to the 1st respondent to consider the issue pertains to payment of one month salary and thereafter, come to a conclusion as to whether the approval petitioner filed by the petitioner can be entertained or not.

9.Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.11.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

Yuva

To

The Special Deputy Commissioner of Labour,

(Officer under Section 33(2)(b) of I.D.Act, 1947),

Chennai-600 006.



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KRISHNAN RAMASAMY, J

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