

W.P.No.3317 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

RESERVED ON : 04.04.2025
PRONOUNCED ON : 22.04.2025

PRESENT:

THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

W.P.No. 3317 of 2020
and
W.M.P.No.3843 of 2020

The Management,
Tamil Nadu State Transport Corporation (Salem) Limited,
Dharmapuri Region, Bharathi Puram, Salem Main Road,
Dharmapuri 5 Petitioner

Vs.

- 1.Mr.C.Annamalai,
Son of Mr.Chinnathambi,
Sankanampatti Post, Palakodu Via,
Kendikanahalli Post, Palakodu Taluk,
Dharmapuri District – 635 205.
2. Special Deputy Commissioner of Labour
Chennai. Respondents

Prayer in W.P.

To issue a Writ or direction particularly in the nature of Writ of Certiorari calling for the records relating to the Order dated 16.07.2019 passed by the 2nd Respondent in I.A.No.10 of 2018 in A.P.No.21 of 2015 and to quash the same



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and pass such further or other Order or Orders as may be deemed fit and proper in the circumstances of the case.

Prayer in WMP

To grant an interim stay of Order dated 16.07.2019 passed by the 2nd Respondent in I.A.No.10 of 2018 in A.P.No. 21 of 2015 pending disposal of the above writ petition.

Appearance of Parties :

For Petitioner: Mr.Ashwin, Standing Counsel.

For Respondent 1 : Mr.K.Gandhikumar.

For Respondent 2 : Mr.R.Kumaravel, Additional Government Pleader.

JUDGMENT

Heard.

2. The Petitioner is a State-owned Transport Corporation. It is aggrieved by the order dated 16.07.2019 passed by the 2nd respondent—the Approval Authority under Section 33(2)(b) of the Industrial Disputes Act—in I.A. No. 10 of 2018 in A.P. No. 21 of 2015, whereby the application for approval was rejected. When the matter was taken up on 12.02.2020, notice was ordered to the Respondents. Subsequently, on 28.03.2025, this Court directed the 2nd respondent to produce the original records, and the same were duly produced.

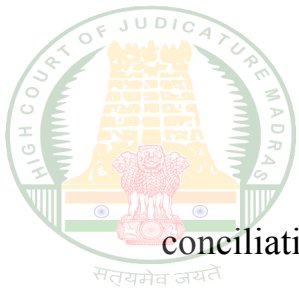


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3. The case of the Petitioner Corporation is that the 1st respondent was employed as a Conductor since the year 2007. On 19.06.2014, while on duty, he allegedly collected Rs.6/- each from ten passengers belonging to the same group—amounting to a total of Rs.60/—without issuing travel tickets. Upon inspection of his bag, a cash shortage of Rs.74/- was also detected. Based on the preliminary report dated 19.06.2014, a charge memo was issued to him on 29.06.2014. The 1st respondent submitted his explanation on 14.07.2014. As the explanation was found unsatisfactory, a domestic enquiry was ordered. During the enquiry, the checking inspector and the bus driver were examined as management witnesses. Pursuant to the enquiry report, a second show cause notice dated 08.11.2014 was issued to the 1st respondent, to which he submitted his reply on 03.12.2014.

4. As the reply submitted by the 1st respondent was found unsatisfactory, he was dismissed from service by an order dated 22.01.2015. Prior to that, a cheque dated 09.01.2015 for a sum of Rs.5,954/-, representing one month's salary in lieu of notice, was issued to him. The Corporation also filed a petition seeking approval of the dismissal before the 2nd respondent, before whom



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conciliation proceedings were then pending. The petition was registered as A.P.

WEB COPY No. 21 of 2015. As the 1st respondent failed to appear before the authority on multiple occasions, the 2nd respondent allowed the approval petition by an order dated 15.12.2015. Subsequently, the 1st respondent filed two applications—one to set aside the ex parte order and another to condone the delay of 861 days in filing the same.

5. After condoning the delay and reopening the proceedings, the 2nd respondent concluded that the charges against the 1st respondent were not proved by legally admissible evidence. It was further held that the Petitioner had failed to satisfactorily rebut the allegation that the one month's salary paid in lieu of notice was incorrect. The authority also found that the application seeking approval of the dismissal was not filed simultaneously with the order of termination. Challenging this order, the present writ petition came to be filed, as already noted. In the grounds raised in support of the writ petition, the Petitioner contended that the condonation of a delay of 861 days was unjustified. It was also submitted that the oral testimony of the checking inspector was sufficient to prove the charges. The Petitioner further asserted that one month's full salary had been paid. Although the dismissal order was dated 22.01.2015 and the application for approval was dispatched on the same



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day, the authority has erroneously recorded the date of receipt as 03.02.2015.

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6. In support of the above contention, learned counsel for the Petitioner placed reliance on the decision of the Hon'ble Supreme Court in **State of Haryana v. Rattan Singh**, reported in (1977) 2 SCC 491, and referred specifically to the following observation in paragraph 4 of the judgment:

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. Ail materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point



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is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and wordly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a ending is certainty available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground. ”

7. Relying on the aforesaid judgment, it was contended that the testimony of the checking inspector was sufficient to sustain the charges. However, in the present case, the approving authority noted that, of the ten passengers involved, only one had provided a written statement, and even that individual was not examined during the enquiry. This observation runs directly counter to the ratio laid down by the Hon'ble Supreme Court in the decision cited above. As regards the deficiency in the payment of one month's salary in lieu of notice, the records reveal that the workman produced a settlement under Section 12(3) of the Industrial Disputes Act, marked as Respondent Exhibit No.1, and also placed reliance on G.O.Ms.No.245, Finance Department, dated 10.10.2014, relating to Dearness Allowance. On this basis, the 1st respondent demonstrated



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that the amount paid fell short of the legally mandated one month's pay as required under Section 33(2)(b). According to him, he was entitled to Rs.14,066/- inclusive of basic pay and dearness allowance, whereas he was paid only Rs.5,954/-.

8. With respect to the requirement of simultaneous filing, the authority observed that although the cheque for one month's salary in lieu of notice was prepared on 09.01.2015—well before the date of dismissal on 22.01.2015—the approval petition was dispatched to the office of the 2nd respondent only on 30.01.2015. The file contained proof of postal acknowledgment, confirming that the petition was sent on 30.01.2015 and was received by the authority on 03.02.2015. Accordingly, the authority held that the approval petition was not filed simultaneously with the order of dismissal.

9. In this context, learned counsel for the 1st respondent referred to the decision of this Court in **Management, Tamil Nadu State Transport Corporation (Villupuram) Ltd. v. Joint Commissioner of Labour (Conciliation)**, reported in 2015 (1) LLJ 685 (Mad), wherein, in paragraphs 13 to 16, the following observations were made:



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“13. As rightly held by the first respondent, there is a mandate under Section 33(2)(b) of the Act that no workman shall be discharged or dismissed, unless he had been paid wages for one month and an application has been made by the employer to the authority before which the industrial dispute is pending, for approval of the action taken by the employer. The Honourable Supreme Court as well as this Court has held in many occasions that payment of one month wages is a mandatory one.

14. In this case, substantially a lesser amount was paid and the first respondent found that on that ground also, the approval application deserves to be dismissed.

15. As stated above, nothing is stated in the affidavit filed in support of the writ petition as to this ground, based on which the first respondent rejected the approval application. Even before this Court, during the argument, no attempt is made to justify the payment of Rs. 2548/- towards one month wages, while the minimum wages, according to the first respondent is Rs. 3081.72.

16. For all the aforesaid reasons, I am of the view that the writ petition deserves to be dismissed and accordingly, the same stands dismissed.”

10. The requirement of compliance with Section 33(2)(b) of the Industrial Disputes Act has been elaborated by the Hon’ble Supreme Court in its judgment in **Strawboard Manufacturing Co. v. Gobind**, reported in AIR 1962 SC 1500. The Court clarified that there are three essential conditions that must be fulfilled to satisfy the proviso to Section 33(2)(b), which are as follows:

“.....As we read the proviso, we are of opinion that it contemplates the three things mentioned therein, namely, (i)



dismissal or discharge, (ii) payments of wages and (iii) making of ,in application for approval, to be simultaneous and to be part of the same transaction, so that the employer when he takes action under s. 33 (2) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time. When however we say that the employer must take action simultaneously or immediately we do not mean that literally, for when three things are to be done they cannot be done, simultaneously but can only be done one after the other. What we mean is that the employer's conduct should show that the three things contemplated under the proviso, namely, (i) dismissal or discharge, (ii) payment of the wages, and (iii) making of the application, are parts of the same transaction.”

11. As rightly held by the 2nd respondent, the writ petition is liable to fail on both counts—namely, the non-payment of full one month’s wages in lieu of notice and the failure to file the approval application simultaneously with the order of dismissal. However, the issue concerning the condonation of delay still requires consideration. In this regard, it is pertinent to refer to the judgment of the Hon’ble Supreme Court in **Ram Nath Sao @ Ram Nath Sahu v. Gobardhan Sao**, reported in (2002) 3 SCC 195, with specific reference to paragraph 13, which reads as follows:

“.....Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a



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party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

12. Further, T.S. Sivagnanam, J. (as he then was), in **Rasipuram Co-operative Urban Bank Limited v. The Authority under the Payment of Gratuity Act / Assistant Commissioner of Labour and Others**, reported in (2016) 1 MAD CK 36, declined to interfere with an order condoning delay and made the following observations:



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“6. short issue which falls for consideration is as to whether the 1st respondent was justified in exercising its discretion and condoning the delay. Rule 10 of the Payment of Gratuity (Central) Rules, 1972 deals with application to be filed before the Controlling Authority. In terms of sub-rule (1) of Rule 10, an application is required to be filed in Form 'N' to the Controlling Authority within a period of 90 days of the occurrence of the cause for the application. In terms of the proviso under Rule 10(1) of the Rules, the Controlling Authority may accept any application under the said sub-rule, on sufficient cause being shown by the applicant, after the expiry of the periods specified. Thus, the starting point of limitation would have to be computed 'from the date of occurrence of the cause for the application'.”

13. In light of the foregoing discussion, this Court finds no ground to interfere with the order passed by the 2nd respondent, either in respect of the condonation of delay or the rejection of the approval sought by the Petitioner for the dismissal of the 1st respondent. Accordingly, the writ petition stands dismissed. Consequently, the connected Writ Miscellaneous Petition is also dismissed. However, there shall be no order as to costs.

22.04.2025

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

To

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2. Special Deputy Commissioner of Labour
Chennai.



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