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**W.P. No.12367 of 2015**

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 06.01.2025**

**CORAM**

**THE HONOURABLE Mr. JUSTICE P.DHANABAL**

**W.P. No.12367 of 2015**  
**and W.M.P. No.1 of 2015**

The Management  
Tamil Nadu State Transport Corporation Limited,  
Salem  
represented by its General Manager .. Petitioner

vs.

1. The Special Deputy Commissioner of Labour,  
DMS Compound, Anna Salai, Chennai.

2. E. Sengottuvelu .. Respondents

**PRAYER:** The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for records in proceedings pursuant to the order passed in Approval Petition No.81 of 2012 dated 15.05.2013 on the file of the 1st respondent and to quash the same.

For Petitioner : Mr. M. Aswin

For Respondents : Mr. T. Chezhan,  
Additional Government Pleader  
[for R1]  
R2- No appearance.

**ORDER**

This Writ petition has been filed challenging the order passed by the 1st



**W.P. No.12367 of 2013**

respondent in A.P. No.81 of 2012 dated 15.05.2013.

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**2. The short facts necessary to dispose of the Writ petition are as follows:-**

The 2nd respondent was working as Conductor under the petitioner's Management and he did not report for duty continuously from 08.03.2011 onwards without prior permission. Therefore, a charge memo dated 12.04.2011 was issued to the 2nd respondent. After receipt of charge memo, the 2nd respondent has not submitted any explanation. Thereafter, enquiry proceedings were initiated and domestic enquiry was conducted after giving sufficient opportunities. The enquiry officer was also filed his report. As per the report, the charges were proved. Therefore, the disciplinary authority awarded punishment of dismissal from service. Thereafter, the Management filed an approval petition before the 1st respondent. The 1st respondent rejected the approval petition. Challenging the same, the present Writ filed has been filed by the Management.

3. The learned counsel appearing for the petitioner would submit that the 2nd respondent was working as 'Conductor' and he was continuously absented in duty from 08.03.2011. Therefore, a charge memo was issued and



**W.P. No.12367 of 2015**

thereafter, domestic enquiry was conducted and charges were proved. On the proven charges, the 2nd respondent was dismissed from service. Therefore, an approval petition was filed before the 1st respondent. The 1st respondent without considering the real charges, refused to grant approval. The 1st respondent has agreed that opportunity was given to the 2nd respondent and there are prima facie evidence to prove the charges and there is no any malafide intention and one month salary was also given to him. However, he refused to grant permission on the ground that the punishment is too harsh. The 1st respondent is not a competent authority to decide the disproportionate punishment and his jurisdiction is a limited jurisdiction, while awarding approval under Section 33(2)(b) of the Industrial Disputes Act. Therefore, he exceeded his limit and the impugned order is liable to be set aside.

4. No representation for the 2nd respondent.

5. In this case, the order of the 1st respondent has been challenged by the Management on the ground that the 1st respondent has exceeded his limit and after recording that the principles of natural justice has been followed and there is a prima facie case based on the acceptable evidence and there is no any malafide intention and one month salary was also paid to the workman,



**W.P. No.12367 of 2015**

the approval was declined only based on the disproportionate punishment.

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6. The 1st respondent has referred the judgment of this Court in ***Tamil Nadu State Transport Corporation (Villupuram Division-I) vs. Joint Commissioner of Labour (Conciliation) Chennai and another reported in 2011-LLJ-646 (Mad)***. The Writ Court passed an order by invoking power under Article 226 of Constitution of India. But already, the Hon'ble Supreme Court settled the law and framed guidelines in ***Lalla Ram vs. DCM Chemical Works (AIR) 1978 (SC) 1004***. But the 1st respondent has referred only the judgment of Madras High Court wherein it is held that "dismissal of workman for unauthorised absence is too harsh". The 1st respondent has no authority to decide the severity of punishment. However, he declined to grant approval.

7. Even according to the enquiry report, the enquiry officer has recommended for awarding major punishment. The above said observation made by the enquiry officer shows his bias approach to the delinquent and it is well settled law that the duty of the enquiry officer is to render findings as to whether the charges were proved or not. It is for the disciplinary authority to award proper punishment and it is not the duty of the enquiry officer to recommend either major or minor punishment. Therefore, the above said



**W.P. No.12367 of 2015**

observation made by the enquiry officer has vitiated the enquiry proceedings.

8. This Court, by invoking Article 226 of the Constitution of India and without sending the matter once again to the 1st respondent, taking into consideration the long pendency of the case and also the workman is still working under the same respondent, is inclined to dispose this Writ petition. This Court, by invoking Article 226 of Constitution of India held that dismissal of workman for unauthorized absence is too harsh. Therefore, refusal to grant approval for the petition filed by the petitioner cannot be set aside.

9. With the above said observations, this Writ petition is dismissed.

**06.01.2025**

Index : Yes/No  
Speaking order/non-speaking order  
mjs

**P. DHANABAL, J.,**

mjs

To

The Special Deputy Commissioner of Labour,  
DMS Compound, Anna Salai, Chennai.



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**W.P. No.12367 of 2015**

**W.P. No.12367 of 2015**

**06.01.2025**