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W.P.No.9357 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.9357 of 2008

and

M.P.No.1 of 2008

The Management
State Express Transport Corporation
(Tamil Nadu) Limited
Pallavan Salai
Chennai 600002.

... Petitioner

Vs.

1.The Joint Commissioner of Labour
(Conciliation)
Chennai.

2.P.Soundarapandiyan

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records and quash the order dated 25.04.2006 in A.P.No.265 of 2004 passed by the first respondent, Joint Commissioner of Labour (Conciliation), Chennai.



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W.P.No.9357 of 2008

For Petitioner : Mr.Santhosh Kumar

For Respondents : Mr.K.Surendran for R1
Additional Government Pleader

Mr.S.T.Varadharajulu for R2

ORDER

This Writ Petition is filed challenging the order passed by the first respondent herein refusing to approve the punishment of dismissal from service imposed on the Workman made in approval petition No.265 of 2004 dated 25.04.2006.

2. The brief factual matrix in which the Writ Petition arises is that the Workman was appointed as a driver on daily wage basis and thereafter was confirmed as a permanent employee in the year 1997. He has been regularized on 01.09.1998. While so, complaining stomach pain from 27.06.2003 the Workman was continuously absent. While so, it is the case of the management that the Workman remained unauthorisely absent and a



W.P.No.9357 of 2008

charge memo dated 04.07.2003 was issued alleging that he is unauthorisely absent from 27.06.2003. It is the case of the Workman that he initially took treatment at Karthik Clinic, Dindugul and he obtained fitness certificate and reported for duty on 01.02.2004. It is the further case of the Workman that he was directed to appear before the medical board and he appeared before the medical board on 18.02.2004 and board examined and found that he was suffering from viral hepatitis with APD. He was given fitness certificate by the board to join duty on 18.02.2004 and the period was advised to be treated as medical leave. While so, the respondent proceeded with the enquiry and by a report dated 13.11.2003, the enquiry officer returned a finding that the charge has been proved and after issue of second show cause notice, the Workman was dismissed from service on 25.08.2004. Thereafter, the present petition is filed under Section 33 (2) (b) for Approval of the Punishment. The petition was resisted by the Workman by filing counter affidavit. The first respondent conducted an enquiry and the exhibits as **Ex.A.1** to **Ex.A.15** were marked on behalf of the management and exhibits **Ex.P.1** to **Ex.P.6** were marked on behalf of the Workman. Thereafter the first respondent considered the issue in accordance with the judgement of the Honourable Supreme Court



W.P.No.9357 of 2008

of India in *Lalla Ram Vs. The management of DCM Chemical Works Ltd*

and another reported in *(1978 (1) LJ 507 SCC)*¹ and found that the Management did not produce the entire enquiry records to conclude that the enquiry is fair and proper. It further found that even the one month salary was not paid in full and only after a period of one year the balance amount was paid to be Workman. He also found fault with the action of the management in filing the approval petition after a lapse of 30 days and on the three grounds, the approval was denied.

3. Heard *Mr.Santhosh Kumar*, learned counsel appearing on behalf of the petitioner Management, *Mr.K.Surendran*, learned Additional Government Pleader appearing on behalf of the first respondent and *Mr.S.T.Varadharajulu*, learned counsel appearing on behalf of the second respondent Workman.

4. The learned counsel appearing on behalf of the petitioner would submit that the finding with reference to the domestic enquiry is

¹ *(1978 (1) LJ 507 SCC)*



W.P.No.9357 of 2008

perverse as the enquiry report is duly produced before the Authority. As far as the salary is concerned, it is only by an erroneous calculation lesser sum is paid and once that was brought to the notice of the management, the management also paid the balance also. The application is filed within a reasonable time and hence, cannot be held to be unreasonable.

5. Per contra, the learned counsel appearing on behalf of the Workman would submit that mere production of the enquiry report is not sufficient and the first respondent has to conclude that whether opportunities were granted to the Workman to cross examine the management witness and also to produce the sworn statements. In the absence thereof, the finding is correct. He would submit that even the one month salary is not paid in full and was paid belatedly after a period of more than one year. He would further rely upon the judgement of the Division Bench of this Court in Writ Appeal No.1555 of 2022 whereunder the Division Bench approved the order passed by the Authority even holding the delay of 8 days as unreasonable. In this case, the delay is more than 30 days and therefore, the Authority is correct in refusing the approval.



W.P.No.9357 of 2008

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6. I have considered the rival submissions made on either side and perused the material records of the case.

7. In this case, the finding of the first respondent is that there is no evidence with reference to conduct of domestic enquiry at all. The said finding is perverse in as much as the management has marked **Ex.A.5** the enquiry findings. A perusal of the enquiry report, the enquiry Officer has also described in detail as to the manner in which the enquiry has been conducted. It clearly states that the management examined one witness and the delinquent examined himself.

8. It is also further noted in the enquiry report that not even an application for grant of leave was made by the Workman. Therefore, the said finding as if that there is no evidence at all with reference to conduct of a domestic enquiry, is incorrect. However, the fact remains that not even the one month salary which is Rs.6081/- was paid in full and eventhough the dismissal order was passed on 25.08.2004, the difference amount of Rs.297/-



W.P.No.9357 of 2008

was paid only on 27.06.2005 after a stand has been taken by the Workman.

Therefore, that is also considered along with the delay in the instance case.

I am of the view that the order of the first respondent cannot be interfered with reference to the fact that it refuses to approve the punishment. But however, this Court notes that eventhough it is the contention of the petitioner that he suffered stomach pain and thereafter the hospital Authorities committed a mistake while performing the surgery, the fact remains that right from the year 2003 he was continuously absent. Even after the Authority refused approval, he did not take any steps to report before the management. Even in the present Writ Petition, there was no interim order. Not even an application under Section 17-B was also filed. It is stated that the Workman has since attained age of superannuation with effect from 30.06.2015.

9. Therefore, considering the fact that the approval is refused only on hyper technical issues, I am of the view that this is a fit case where backwages should be denied to the Workman especially considering the fact that even after the dismissal of the approval petition he did not even choose to report for duty.



W.P.No.9357 of 2008

WEB COPY

10. In view thereof, this Writ Petition is disposed on the following terms;

1) The impugned order passed by the first respondent dated 25.04.2006 made in approval petition No.265 of 2004 is upheld in as much as it refuses to approve the punishment of dismissal imposed on the Workman.;

2) The Workman shall be deemed to be in service till the date of superannuation till 30.06.2015 and all the retiral benefits such as gratuity provident fund dues etc., shall be paid to the Workman, however, from 27.06.2003 till 30.06.2015. The Workman will not be entitled for any backwages. The management shall calculate the retiral benefits and shall pay to the Workman within a period of 8 weeks from the date of production/receipt of the website uploaded copy of this order, without waiting for the certified copy of the order.

No costs. Consequently, connected Miscellaneous Petition is closed.

02.01.2025



W.P.No.9357 of 2008

Neutral Citation : No
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To

The Joint Commissioner of Labour
(Conciliation)
Chennai.



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W.P.No.9357 of 2008

D.BHARATHA CHAKRAVARTHY, J.

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W.P.No.9357 of 2008
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