



WEB COPY



W.P.No.33174 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.33174 of 2013
and
MP.Nos.1 of 2013 & 1 of 2014

Tamil Nadu State Transport Corporation Limited,
Salem Division Rep. by General Manager,
No.12, Ramakrishna Road, Salem.

...Petitioner

Vs.

1. The Special Deputy Commissioner of Labour,
Chennai.
2. G.Selvamani

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records in proceedings pursuant to the order passed in Approval Petition No.61 of 2012 dated 27.12.2012 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.M.Aswin

For Respondents : R1 - Court
: Mr.S.Tamilselvan, for R2



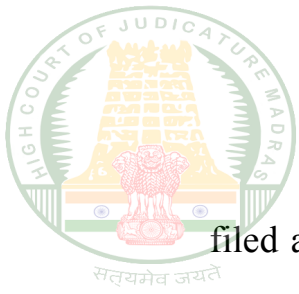
W.P.No.33174 of 2013

WEB COPY

ORDER

This Writ petition has been filed seeking quashment of the order of the 1st respondent dated 27.12.2012 made in A.P.No.61 of 2012 and to consequently direct the 1st respondent to approve the order of dismissal dated 01.12.2018 passed by the petitioner as against the 1st respondent.

2. The case of the petitioner is that the 2nd respondent was working as conductor in the petitioner Corporation from 10.03.1993. While so, the 2nd respondent without any prior intimation or permission absented himself from duty from 29.10.2010. Since, such absention is a violation of Section 19(1)(F) of the Certified Standing Orders of the petitioner Corporation, the petitioner issued a charge memo to the residential address of the 2nd respondent. However, as the 2nd respondent did not offer any explanation, the domestic enquiry was ordered and the 2nd respondent did not participate even in this domestic enquiry. After conducting enquiry in a fair and proper manner, following the principles of natural justice and also offering ample opportunities to the 2nd respondent to defend his case, an order of dismissal came to be passed on 30.03.2012. Thereafter, the petitioner corporation



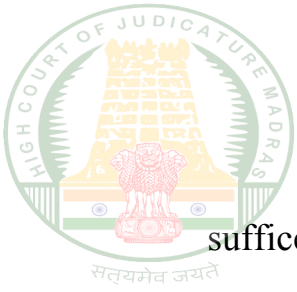
W.P.No.33174 of 2013

WEB COPY

filed an Approval Petition No.61 of 2012 before the 1st respondent, who in turn, vide impugned order dated 27.12.2012, dismissed the said approval petition filed by the petitioner. Challenging the same, the petitioner has come up with this Writ petition.

3. Learned counsel for the petitioner submitted that, having held that the mandatory provisions of Section 33(2)(B) of the Industrial Disputes Act has been followed by the petitioner namely, the communication of the termination order along with one month salary, following principles of natural justice in the domestic inquiry, the 1st respondent had grossly erred in rejecting the approval petition filed by the petitioner by holding that the petitioner has not produced any *prima facie* material to prove the unauthorized absence of the 2nd respondent/workman, which is wholly unsustainable. Therefore, the learned counsel for the petitioner prayed that the impugned order be set aside and the Writ petition to be allowed.

4. Per contra, the learned counsel appearing on behalf of the 2nd respondent justified the order passed by the 1st respondent and submitted that mere fulfilling of certain provisions of Section 33(2)(B) would not



W.P.No.33174 of 2013

WEB.COM

suffice and all the provisions should be meticulously followed and honoured while dismissing the employee, since, by dismissing an employee, it is not only the employee who would be suffering, but his entire family. However, the petitioner has conducted the farce enquiry without even producing *prima facie* evidence to prove the misconduct of the 2nd respondent. Thereby, after careful consideration of the material documents placed before it, the 1st respondent rejected the approval petition filed by the petitioner, which need not be interfered with. Accordingly, he prayed for dismissal of this Writ petition.

5. Heard learned counsel on either side and perused the materials available on record.

6. The ingredients which should be satisfied by the employer while filing the approval petition have been spelt out in the decision of the Apex Court in ***Lalla Ram Vs. D.C.M. Chemical Works Ltd. and Ors.***, reported in ***AIR 1978 SC 1004***, wherein the Supreme Court held thus :-



"(i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;

(ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;

(iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;

(iv) whether the employer has paid or offered to pay Wages for one month to the employee; and

(v) 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 by him."

7. From the materials available on record it is evident that, while holding the 2nd respondent guilty by absenting himself in an unauthorised manner, the 1st respondent has found that the petitioner has failed to prove the charges against the 2nd respondent/workman by producing *prima facie* evidence and the petitioner has merely produced the complaint given by the



W.P.No.33174 of 2013

WEB COPY

Branch manager about the unauthorised absence of the 2nd respondent and has not produced any documentary proof in the form of attendance Register.

The absence of producing any documentary evidence to substantiate the unauthorised absence of the 2nd respondent made the 1st respondent to hold that the petitioner has not produced any *prima facie* material to justify the order of dismissal.

8. This Court is in complete agreement with the arguments advanced by the learner counsel for a 2nd respondent that, when an employee is dismissed it would affect not only him but his dependants also and therefore every care and caution should be taken by the employer to adhere to all the provisions of the relevant section. As rightly noted down by the 1st respondent, nothing prevented the petitioner from producing the attendance register to show that the 2nd respondent was on unauthorized absence, as production of Attendance register is the basic material in a case of this nature. Moreover, Attendance register is not a document to be summoned from the outside source or another department and it is very much available within the office premises or even with the Branch manager. When the Branch Manager has lodged a complaint of unauthorised absence of the 2nd



W.P.No.33174 of 2013

WEB COPY respondent, he could have very well proved the same by producing the corresponding attendance register for the relevant period. Therefore, non production of attendance register certainly vitiates the case of the petitioner. Therefore, this Court is in agreement with the argument put forth by the learned counsel for the 2nd respondent and this Court does not find any fault with the impugned order passed by the 1st respondent rejecting the approval petition filed by the petitioner Corporation.

9. Further, it is brought to the notice of this Court that, pending Writ petition, the 2nd respondent had reached the age of superannuation. In view of the above, the petitioner is directed to settle the terminal benefits and all other benefits to the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order and it is made clear that the 2nd respondent is entitled for continuity of service for the purpose of calculating the terminal benefits.



W.P.No.33174 of 2013

WEB COPY 10. For the reasons aforesaid, this Writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

20.02.2025

skt

NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

1. The Special Deputy Commissioner of Labour,
Chennai.
2. The Tamil Nadu State Transport Corporation Limited,
Salem Division Rep. by General Manager,
No.12, Ramakrishna Road, Salem.



WEB COPY



W.P.No.33174 of 2013

M.DHANDAPANI, J.

skt

W.P.No.33174 of 2013
and
MP.Nos.1 of 2013 & 1 of 2014

20.02.2025