



WEB COPY



W.P. No.33567 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.33567 of 2013
and W.M.P. No.1 of 2013

The Managing Director,
State Express Transport Corporation TN Ltd.,
Pallavan Salai,
Chennai-600 002. .. Petitioner

vs.

1. K.B. Ramalingam [deceased]

2. The Presiding Officer,
II Additional Labour Court,
City Civil Court Buildings,
High Court Compound,
Chennai-600 104.

3. M. Santhakumari W/o. K.B. Ramalingam

4. R. Yogalakshmi D/o. K.B. Ramalingam

[3rd and 4th respondents were substituted as
legal representatives of the deceased /
1st respondent vide order dated 30.01.2024] .. Respondents

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records pertaining to the award dated 23.04.2009 made in I.D. No.218 of 2007 on the file of the



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2nd respondent and to quash the same.

For Petitioner : M/s. L.S.M. Hasan Fizal

For Respondents : R2 - Court.

Mr. K.V. Ananthakrishnan
[for R1, R3 and R4]

ORDER

This Writ Petition has been filed by the petitioner challenging the order passed in I.D. No.218 of 2007 on the file of the II Additional Labour Court, Chennai dated 23.04.2007 and to quash the same.

2. According to the petitioner, the 1st respondent is an ex-employee of the petitioner Corporation and he was appointed as Junior Assistant on 01.11.1986 and he was a habitual absentee and his attendance was not satisfied. While so, in the year 1993, the 1st respondent attended duty only for 21 days. He was unauthorizedly absent to the duty for one month from 01.06.1995 to 30.06.1995. Due to his unauthorised absence, the Writ Petitioner Corporation had issued a charge memo and thereafter, the 1st respondent had given an explanation and had met the General Manager of the Writ petitioner Corporation. Thereafter, on humanitarian ground, in order to give an opportunity, he was permitted to work without prejudice to the domestic enquiry. Again, the 1st respondent was absented for 3 months



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continuously without any leave letter / medical certificate. In the meantime, the previous domestic enquiry was completed and after receiving the enquiry report, the 1st respondent has not given any response to the domestic enquiry notice. The enquiry officer has given a finding that all the charges were proved against the 1st respondent. The 1st respondent was already punished through disciplinary action and he caused loss to the tune of Rs.86,50,000/- to the petitioner's Corporation while working in finance section, for that also, domestic enquiry was conducted and the 1st respondent was asked to pay a sum of Rs.3.94 lakhs. In the meantime, the petitioner Corporation sent a Show Cause Notice, but the 1st respondent did not receive notice and thereafter, final order was passed by terminating the 1st respondent from service and the same was challenged through an industrial dispute before the Labour Court. In the proceedings before the Labour Court, the Petitioner Corporation filed a counter and thereafter due to non-appearance of the counsel for the respondent in the main industrial dispute, who is the petitioner herei, an exparte order was passed on 23.04.2009. Thereafter, the 1st respondent had filed a C.P. No.2343/2011 and the same was also ordered as exparte on 11.09.2012. As per the order passed in C.P. No.2343 of 2011, the Writ Petitioner Corporation has to pay a sum of Rs.15,12,475/- to the 1st respondent. In the meantime, the 1st respondent had filed an execution



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petition. After receiving the execution petition notice, the petitioner Corporation came to know about the proceedings in the industrial dispute as well as the Computation Petition. They filed a petition to set aside the exparte order with condone delay petition and the same was allowed on condition to deposit a sum of Rs.2 lakhs in the Court and to pay a sum of Rs.5,000/- as cost to the 1st respondent. Due to administrative reasons, the petitioner Corporation was unable to comply the direction of the Labour Court in time. The extension of time petition was also filed and the same was also dismissed. Therefore, now the petitioner Corporation has filed this Writ petition challenging the order passed in the main industrial dispute.

3. The learned counsel appearing for the petitioner Corporation would submit that the 1st respondent was the ex-employee of the petitioner Corporation and he was on unauthorized absent, thereby they initiated disciplinary proceedings. In the disciplinary proceedings, the 1st respondent has not participated and thereafter, the enquiry report was submitted stating that the charges levelled against the 1st respondent were proved and thereafter, an order of termination was passed and the same was challenged through an industrial dispute. In the industrial dispute, an exparte order was passed as against the petitioner Corporation and thereafter, the 1st respondent



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has filed a Computation petition in C.P. No.2343 of 2011 and in the said Computation Petition also, exparte award was passed. Thereafter, the petitioner Corporation has filed a petition to condone delay petition along with petition to set aside the exparte award and the Labour Court directed the petitioner Corporation to deposit a sum of Rs.2 lakhs in the Court and to pay a sum of Rs.5,000/- as cost to the 1st respondent. Thereafter, the petitioner Corporation filed an extension of time petition and the same was dismissed. Therefore, the petitioner Corporation has filed this Writ petition. In fact, the 1st respondent was a regular absentee and he committed irregularity in attending his duty and he caused loss to the petitioner Corporation. Therefore, the disciplinary authority passed an order of terminating the service of the 1st respondent on 23.08.1996. Thereafter, the same was challenged through an industrial dispute. In the industrial dispute, the Corporation had filed a counter and thereafter, due to non-appearance of the petitioner Corporation, the Labour Court passed an exparte award. The Labour Court failed to consider the serious charges, which were proved against the 1st respondent through enquiry. Therefore, the award passed by the Labour court is liable to be set aside.

4. The learned counsel appearing for the respondents 3 and 4 would submit that they are the legal heirs of the 1st respondent, who died during the



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pendency of the Writ proceedings and the charges were issued against the 1st respondent for his unauthorized absent. But enquiry was not conducted in a proper manner and without giving opportunity, enquiry was conducted and awarded punishment of termination of service. Therefore, the 1st respondent raised an industrial dispute. Before the Labour Court, the petitioner Corporation has not appeared and due to the non-appearance of the petitioner, the Labour Court has passed an order after examining the witnesses and perusing the documents. Though the order was passed by setting the petitioner Corporation as exparte, the deceased workman had examined witnesses and marked documents. Based on the documents, the Labour Court has passed the award. Without any rebuttal evidence, the contention of the petitioner Corporation cannot be accepted. Therefore, the Labour Court passed a reasoned order and the present Writ petition is liable to be dismissed.

5. Heard both sides and perused all the materials available on record.

6. It is an admitted fact that due to the unauthorized absent of the 1st respondent, domestic enquiry proceedings were conducted and in the enquiry proceedings, the deceased workman / 1st respondent has not participated and thereafter, the disciplinary authority has passed an order of termination from



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service. Challenging the said order, the workman has raised an industrial dispute and the same was ordered by the Labour Court. The present Writ petitioner, who was the respondent in the said industrial dispute, filed a counter, but thereafter, they had not appeared before the Labour Court and the Labour Court allowed the industrial dispute on 23.04.2009.

7. Thereafter, the 1st respondent / deceased workman had filed a computation petition in C.P. No.2343 of 2011, ie., after two years from the date of award. In that computation petition also, the Writ petitioner Corporation has not participated and the same was also ordered ex parte. The said ex parte order was passed on 11.09.2012. Thereafter, the Writ petitioner Corporation filed a petition to set aside the ex parte award and the same was allowed on condition to deposit a sum of Rs.2 lakhs into the Court and to pay a sum of Rs.5,000/- towards cost to the 1st respondent. The said order was not complied by the Writ petitioner Corporation. Prior to that, the 1st respondent had also filed an execution petition and after receipt of notice in that execution petition, the petitioner Corporation filed the said ex parte set aside petition. They have not complied the order of the Labour Court and thereafter, they filed the present Writ petition.



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8. During the pendency of the Writ petition, the 1st respondent died and his legal heirs were impleaded as 3rd and 4th respondents. The conduct of the Writ petitioner in non-prosecuting the case before the Labour Court and non-compliance of the conditional order passed by the Labour Court in the condone delay petition for filing the exparte set aside petition, will play a vital role in deciding this Writ petition.

9. The Writ petitioner has not complied the order of the Labour Court and after the conditional order passed by the Labour court to deposit a sum of Rs.2 lakhs, this Writ petition is filed. Therefore, the conduct of the Writ petitioner shows its intention to delay the proceedings. Moreover, during the pendency of the Writ petition, the 1st respondent / workman also died. Therefore, at this stage, it is not appropriate to set aside the order passed by the Labour Court, that too after 15 years.

10. The Writ petitioner has not stated any reasons for the delay and non-compliance of the conditional order passed by the Labour Court. Therefore, the Writ petitioner has lost his chance before the Labour Court and now this court has to see only the available records to decide the petition on merits. Even on merits, there are no records to substantiate the Writ



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petitioner's contention, since the petitioner has not filed any documents before the Labour Court. Therefore, at this stage, it is not appropriate to accept the grounds raised by the Writ petitioner Corporation in the Writ petition.

11. Therefore, as discussed supra, this Court is of the opinion that this Writ petition has no merits and deserves to be dismissed.

12. Accordingly, the Writ petition is dismissed. No costs. The Writ petitioner Corporation is directed to pay the retirement benefits to the legal heirs of the 1st respondent i.e., 3rd and 4th respondents within a period of **one (1) month from the date of this order.**

27.01.2025

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

P. DHANABAL, J.,

mjs



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To

The Presiding Officer,
II Additional Labour Court,
City Civil Court Buildings,
High Court Compound,
Chennai-600 104.

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