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W.P.No.5161 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.5161 of 2015

The Management,
Tamil Nadu State Transport Corporation Limited,
No.12, Ramakrishna Road,
Salem-07,
Rep.by its General Manager.

... Petitioner

Vs.

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

2.R.Mohan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records in the proceeding pursuant to the order passed in A.P.No.315 of 2011 dated 28.05.2013 on the file of the first respondent and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.



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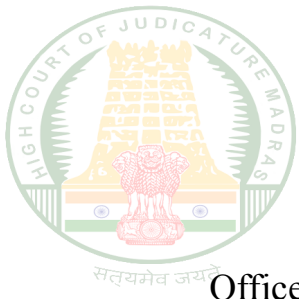
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For Petitioner : Ms.M.Aswin
For Respondents : Mr.K.Surendran
Additional Government
Pleader for R1
Mr.M.Ravi for R2

ORDER

This Writ Petition has been filed challenging the order dated 28.05.2013 passed in A.P.No.315 of 2011 by the first respondent.

2. The learned counsel appearing for the petitioner Corporation submits that the second respondent was working as Daily Paid Driver at Erumapalayam-I Branch in the petitioner Corporation and he did not report for duty continuously from 05.08.2010 onwards without prior permission and intimation. As per Clause 16(E) of the certified Standing Order of the petitioner Corporation, the petitioner Corporation issued a Charge memo dated 22.12.2010 to the second respondent and he submitted his explanation, wherein, no valid reason was given by him. Therefore, the petitioner Corporation decided to conduct enquiry and appointed an Enquiry



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Officer and it was initmated to the second respondent, vide notices dated 09.03.2011, 17.03.2011 and 16.04.2011 stating that if he did not appear before the Enquiry Officer, the enquiry will be set ex-parte. Despite sufficient opportunities were afforded to the second respondent, he has not appeared which constrained the Enquiry Officer to proceed against the second respondent by setting him ex-parte. On examination of witnesses and marking of documents, the enquiry was concluded, holding that the charges against the second respondent were proved, based on which, the petitioner Corporation has passed an order of dismissal dated 22.08.2011 along with one month salary and sought approval of the dismissal order before the first respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947 by filing A.P.No.315 of 2011. However, the Labour Court dismissed the approval petition, vide order dated 28.05.2013 on the ground that the enquiry was not conducted in a proper manner and no *prima facie* case was established by the petitioner Corporation by adducing legal evidence.



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3. The learned counsel appearing for the petitioner further submits that the second respondent himself in his counter affidavit filed before the Labour Court stated that the charge memo was issued on 22.12.2010, for which he has submitted his explanation on 02.03.2011 and since his explanation was not satisfactory, the General Manager of the petitioner Corporation informed him that a domestic enquiry would be conducted by one R.Chandramohan, Senior Assistant, on 16.03.2011 and he should appear for the enquiry, during which, T.Lakshmanan, Branch Manager will be examined as witness and at the request of the second respondent, the enquiry was adjourned to 24.03.2011 and the second respondent has not appeared on 24.03.2011, 31.03.2011 and 03.05.2011, therefore, the Enquiry Officer has drawn an ex-parte minute on 03.05.2011. Further, all the documents relating to the charge memo, notices, ex-parte enquiry proceedings, show cause notice issued to the second respondent and the remarks called for from the second respondent to the enquiry proceedings were also produced before the Labour Court to establish the *prima facie*



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case. While that being the position, the Labour Court erred in rejecting the approval petition on the ground that the enquiry was not conducted in a proper manner and prays for interference.

4. The learned counsel appearing for the second respondent submits that the Labour Court, after considering the materials placed before it, has dismissed the approval petition filed by the petitioner Management, since no *prima facie* case was established by the petitioner Management. Hence, he prays for dismissal of this petition.

5. Heard the learned counsel appearing for the petitioner Management and the learned counsel appearing for the second respondent/employee.

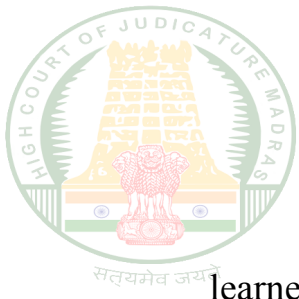
6. The employment of the second respondent in the petitioner Corporation was not in dispute and due to continuous absence from duty without prior permission, he was issued with a charge memo and the second



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respondent submitted explanation and it was not satisfactory. Thereafter, enquiry was conducted by appointing the Enquiry Officer. Even though notices were sent regarding intimation of enquiry to the second respondent stating that if he fails to appear for the enquiry, the enquiry will be set *ex-parte*, the second respondent has not appeared for the enquiry and to prove the same, documents were marked as Ex.P4 to Ex.P7. Thereafter, the Enquiry Officer has drawn an *ex-parte* minute, based on which, the order of dismissal was passed on 22.08.2011 and one-month salary was also paid to the second respondent and the *prima facie* case was also established by the petitioner Management by adducing evidences. Immediately, the petitioner Management has also filed the approval petition before the first respondent in A.P.No.315 of 2011 on 25.08.2011 within the stipulated time. When the procedure/contemplated in the certified Standing Orders was complied with and when there is strict adherence to the principles of natural justice before passing the order of dismissal as against the second respondent / workman, rejecting the approval petition filed by the petitioner Management is totally unsustainable. This Court finds force on the submission made by the



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learned counsel for the petitioner and the order of the first respondent warrants interference and the same is liable to be set aside.

7. In the light of the reasons assigned above, this Writ Petition stands allowed, setting aside the award dated 28.05.2013 passed in A.P.No.315 of 2011 by the first respondent. The second respondent/workman is granted liberty to raise Industrial Dispute before the Labour Court in the manner known to law, if so advised and the period of pendency of this writ petition shall be excluded for the purpose of limitation. There shall be no order as to costs.

12.03.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes/No
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M.DHANDAPANI, J.

ssb

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

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