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W.P.No.11996 of 2018

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

**DATED : 30.04.2025**

**CORAM**

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

**W.P.No.11996 of 2018**

**And**

**W.M.P.No.13975 of 2018**

M/s.Tamil Nadu State Transport Corporation  
(Salem Limited),  
12, Ramakrishna Road,  
Salem – 636 007.  
Rep. by Managing Director

... Petitioner

**Vs.**

1.C.Varadhan (Deceased)

2.The Special Deputy Commissioner of Labour,  
Chennai.

3.Mageswari.V.

4.Prabhakaran.V.

5.Prasanth.V.

(R3 to R5 are substituted as LR's.  
of deceased R1, as per order dated  
16.04.2025 in WMP.14090 of 2025  
in WP.11996 of 2018 by MDIJ)

... Respondents

**Prayer:**

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the order dated 12.09.2017 passed by the second respondent in A.P.No.348 of 2012 and to quash the same.



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For Petitioner : Mr.M.Aswin

For Respondents : Mr.K.Surendran for R2  
Additional Government Pleader  
R3 – NRN  
R4 and R5 – No Appearance

### **ORDER**

The petitioner has filed this writ petition seeking to quash the order dated 12.09.2017 passed by the second respondent in A.P.No.348 of 2012.

2.The facts of the case in brief is that the deceased first respondent was working as daily wage Conductor in the petitioner Corporation and he was unauthorisedly absent from 14.08.2011 and hence he was issued with charge memo dated 19.01.2012 and since the first respondent did not participate in the enquiry, enquiry was conducted in the absence of the first respondent and thereafter, the first respondent was dismissed from service vide order dated 05.12.2012 and the petitioner filed approval petition before the second respondent under Section 33 (2) (b) of the Industrial Disputes Act and the said approval petition was rejected by the second respondent. Challenging the same, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner submitted



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that the second respondent had rejected the approval petition on the ground that there was a delay of five days, which is not sustainable, since mere delay in filing the approval petition will not vitiate the entire proceedings. While so, rejecting the approval petition filed by the petitioner on the ground that, the same was not filed simultaneously before the authority is not sustainable, as the word simultaneous mentioned is not explained either in the Act or in the Rules. Hence, the order of the second respondent is liable to be set aside and accordingly, prayed for appropriate orders.

4.Per contra, the learned Additional Government Pleader appearing for the second respondent submitted that, though the first respondent was dismissed from service on 05.12.2012, the petitioner corporation had filed the approval petition only on 10.12.2012 with a delay of five days, which is an incurable defect as per the decision of the Hon'ble Division Bench of this Court in the case of ***The Management, Tamil Nadu State Transport Corporation (Salem) Limited Vs. C.Iyandhurai and anr. (W.A. No.1555 of 2022)*** dated **01.08.2022**. For better appreciation, the relevant portion of the said order is extracted hereunder:

*"The Writ Appeal has been filed against*



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*the order passed by the learned Single Judge refusing to interfere with the order passed by the second respondent-Authority in dismissing the appellant-Management's approval petition under Section 33(2)(b) of the Industrial Disputes Act, 1947. The rejection of the approval petition was on the ground that there was shortfall in payment of one month salary to the first respondent-employee and there was eight days delay in filing the approval petition. The learned Single Judge, while adverting to Section 33(2)(b) of the Industrial Disputes Act, 1947, read with Rule 64(2) of the Industrial Disputes Rules, 1958, observed that an application seeking approval of dismissal of an employee needs to be served with the order of punishment and simultaneously, approval application has to be filed before the Authority, and otherwise, the approval petition cannot be entertained and hence, the learned Single Judge observed that the second respondent-authority rightly rejected the approval petition. In view of the above, the learned Single Judge, while not interfering with the order passed by the second respondent-authority in dismissing the approval petition, made it clear that the first respondent-employee would be entitled to all monetary benefits due to him and the*



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*appellant-Management was expected to extend the same and the period for compliance was also given by the learned Single Judge. Looking into the order passed by the learned Single Judge, we find no ground made out to entertain the Writ Appeal, which is accordingly dismissed. There shall be no order as to costs. Consequently, the miscellaneous petition is closed."*

5. Notice sent to the third respondent returned with endorsement 'unclaimed'. Though notice was served on respondents 4 and 5, none appeared on behalf of respondents 4 and 5 today. However, considering the period of pendency of this writ petition, this Court is inclined to dispose of the same based on 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*



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*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 the approval petition was not filed simultaneously when the order of



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dismissal had come to be passed. It is the consistent view of the Courts that there should be proper explanation for the delay and in the absence of the same, even a single day's delay is fatal. Though in *Lalla Ram's* case, it has been held that reasonable delay, even then the reasonableness should be explained. However, in the case on hand, there is no explanation for the delay, much less any explanation, which is reasonable and in such a circumstances, the requirement of Section 33(2)(b) has not been fulfilled and, therefore, the same does not merit acceptance. Appreciating the materials in proper perspective, the Labour Court has rejected the approval petition, which cannot be said to be erroneous. Further, the decision of the Division Bench of this Court in ***C.Iyandhurai*** case (*supra*) is also in line with the decision of this Court.

8. For the reasons aforesaid, this writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

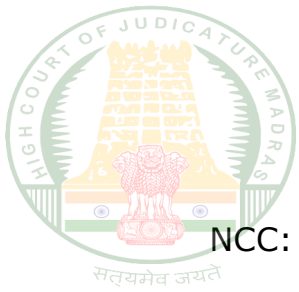
**30.04.2025**

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Index: Yes/ No

Speaking Order: Yes/ No

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NCC: Yes/ No

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**M.DHANDAPANI,J.**  
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To

1.The Special Deputy Commissioner of Labour,  
Chennai.

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**And**  
**W.M.P.No.13975 of 2018**

**30.04.2025**

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