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W.P.No.12500 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2025

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

W.P.No.12500 of 2025

and

WMP.No.14100 of 2025

The Management,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Limited, Pudukottai Region,
51/1,Pillai Thanner Pandhal,
Thirumayam Road,
Pudukottai – 622 001.

...Petitioner

Vs.

1. K.Kannan
2. The Special Joint Commissioner of Labour,
DMS Campus, Anna Salai, Chennai.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 06.11.2023 passed by the second respondent in Approval Petition No.101 of 2022 and quash the same, consequently direct the second respondent to approve the order of the petitioner dated 30.04.2022 dismissing the first respondent from service.

For Petitioner : Mr.M.Murali Vinodh

For Respondents : Mr.K.Surendran, APG, for R2



W.P.No.12500 of 2025

ORDER

WEB COPY The petitioner has come up with the Writ petition seeking quashment of the order of the 2nd respondent A.P.No.101 of 2022 dated 30.04.2022.

2. It is the case of the petitioner that the 1st respondent was appointed as a conductor on 29.12.2020. Due to his unauthorised absence, the petitioner Corporation issued a charge memo to the first respondent, who voluntarily refused to receive the same. The enquiry officer, after completion of enquiry, found the first respondent guilty and submitted an enquiry report dated 06.09.2021 to the petitioner management. However, the first respondent on 05.02.2022 submitted a letter stating that he is not willing to work. Whiles, the petitioner management passed the dismissal order dated 30.04.2022 against the first respondent. Subsequently, an Approval Petition was filed by the petitioner in A.P.No.101 of 2022 before the 2nd respondent and the same was rejected on 06.11.2023, citing delay in filing the approval petition. Challenging the same, the present writ petition has been filed.

3. Learned counsel for the petitioner corporation submitted that, the



W.P.No.12500 of 2025

2nd respondent had rejected the approval petition on the ground that there was a delay of eight 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 2nd respondent is liable to be set aside and accordingly, prayed for appropriate orders.

4. Per contra, the learned Additional Government Pleader appearing on behalf of the 2nd respondent submitted that, though the 1st respondent was dismissed from service on 30.04.2022, however, the petitioner corporation had filed the approval petition only on 09.05.2022 with a delay of about eight 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 the order



WEB COPY



W.P.No.12500 of 2025

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 advertent 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 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



WEB COPY



W.P.No.12500 of 2025

order as to costs. Consequently, the miscellaneous petition is closed."

5. Since no adverse order is being passed against the first respondent, notice to the first respondent is dispensed with.

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



WEB COPY



W.P.No.12500 of 2025

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 dismissal had come to be passed. It is even the admitted case of the petitioner that there is a delay of about eight days. 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



W.P.No.12500 of 2025

costs. Consequently, the connected miscellaneous petition is closed.

WEB COPY

08.04.2025

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

To

The Special Joint Commissioner of Labour,
DMS Campus, Anna Salai, Chennai.

M.DHANDAPANI, J.

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WEB COPY



W.P.No.12500 of 2025

W.P.No.12500 of 2025

08.04.2025