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W.P.No.23732 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2025

CORAM :

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

W.P.No.23732 of 2019
and
WMP.No.23598 of 2019

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Limited,
Kancheepuram Region, Kancheepuram – 631 552. ...Petitioner

Vs.

Late B.Sekar

1. Zion Esther
2. Ubeth Rajan
3. Jayal Rani
4. Kaaliyammal
5. The Special Deputy Commissioner of Labour,
D.M.S. Compound, Chennai – 600 006. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the learned Authority made in A.P.No.317 of 2013 dated 31.01.2018 and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

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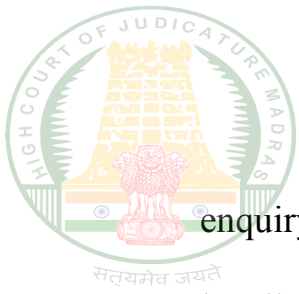
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For Petitioner : Ms.P.Pavithra
For Respondents : Mr.S.S.Siva Kumar
for M/s.Law Square, for R1 to R4

ORDER

This Writ petition has been filed seeking quashment of the order dated 31.01.2018 made in A.P.No.317 of 2013.

2. The case of the petitioner is that, pending proceedings before the 5th respondent, the employee died and his Legal heirs were impleaded to plead their case. Even in this petition, the legal heirs of the deceased employee are arrayed as respondents 1 to 4. The deceased employee was working as a Driver under the petitioner corporation. The deceased employee viz., Late B.Sekar was a chronic absentee and his absenteeism has brought disrepute to the petitioner corporation and has also resulted in financial loss. As per the Standing orders of the petitioner corporation, if an employee takes leave for more than 8 days without proper reason, he is liable for disciplinary proceedings. Since the deceased employee was absenting himself frequently, the petitioner issued a charge memo; not satisfied with his reply, instituted an



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enquiry officer, who in turn submitted a report stating that the charges levelled against the deceased employee stood proved. After completing the formality of issuing the second show cause notice, the petitioner ultimately passed the order of dismissal as against the deceased employee on 30.10.2013 and the petitioner had enclosed one month salary of the employee by way of cheque. Thereafter, seeking approval of their actions, the petitioner filed an approval petition under Section 33(2)(B) of the Industrial Disputes Act before the 5th respondent, who in turn, vide impugned order dated 31.01.2018 refused to give its stamp of approval to the petition filed by the petitioner corporation justifying the dismissal of the deceased employee. Challenging the same, the petitioner has come up with this Writ petition.

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

4. A perusal of the material documents placed on record reveals that, the respondents 1 to 4/the legal heirs of the deceased employee have filed a detailed counter stating that the deceased was suffering from kidney failure



and he was under dialysis and during the relevant period, the deceased employee was also suffering from Jaundice and smallpox. The legal heirs of the deceased employee have produced voluminous documents before the Authority in support of their contention that the deceased was not having a good health.

5. It is to be noted that the order of dismissal was passed on 30.10.2013 and the deceased employee breathed his last on 24.11.2014, a year later. The deceased was aged just 46 years at the time of his death and the deceased had died in ESIC Hospital at KK Nagar, Chennai. This Court has every reason to believe the version of the legal heirs of the deceased employee that the deceased was indeed having severe medical ailments, considering the young age of the deceased at the time of his death, that too in a hospital.

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;

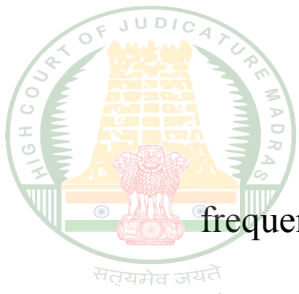
(ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;

(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. As rightly pointed out by the 5th respondent, the petitioner has grossly failed to produce any document pertaining to the domestic enquiry and thereby, the first test went against the petitioner and the second test of *prima facie* case for dismissal also goes against the petitioner. The only ground on which the employee was dismissed from service was that he was a



frequent absentee. The deceased employee had produced material evidence to show his ailments. If the petitioner doubted the genuineness of such certificates, nothing prevented the petitioner from directing the employee to undergo medical test before the Government Hospital. Thereby, the third test also fails for the above reason. The procedure adopted by the petitioner was nothing but an unfair labour practice.

8. No doubt, the petitioner enclosed a cheque for one month salary for the deceased employee. As regards the fifth test, it is seen from the records that the employee was dismissed from service on 30.10.2013, however, the approval petition was filed only on 04.11.2013, which is after a delay of five 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.



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9. This is rather an unfortunate case where the petitioner is litigating against a deceased employee for more than a decade. The employee was dismissed from service on 30.10.2013 and the employee died on 24.11.2014 and the impugned order was passed on 31.01.2018 and after dismissal of the approval petition, the present writ petition has been filed by the petitioner corporation in the year 2019. The legal heirs of the deceased are conducting the case before the Tribunal and this Court for no fault of theirs. The manner in which the petitioner has conducted the domestic enquiry and non production of enquiry report either before the 5th respondent or before this Court to ascertain as to whether the enquiry was conducted in a fair and proper manner and the delay in filling the approval petition and the Conduct of this writ petition shows that the petitioner corporation wants to punish the deceased employee just because he had taken leave. For mere unauthorised absence, imposing a punishment of dismissal from service is highly disproportionate.



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10. At the risk of the petition, this Court reiterates again that this Court is convinced with the medical records produced by the legal heirs of the deceased employee and the deceased died only because of his ailments. Hence, this Court is of the view that, appreciating the materials in proper perspective and more particularly, applying the five tests as laid down by the Hon'ble Apex Court in the Lalla Ram's case, the 5th respondent had refused to give approval, which cannot be said to be erroneous and thereby, the same does not warrants interference of this Court.

11. The petitioner Corporation is directed to settle the entire terminal benefits in favour of the respondents 1 to 4, the legal heirs of the deceased employee within a period of four weeks from the date of receipt of a copy of this order, failing which, serious view will be taken against the petitioner. The respondents 1 to 4/the legal heirs of the deceased employee are given liberty to approach this Court if the petitioner fails to comply with the direction of this Court.



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

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

To:

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2. The Special Deputy Commissioner of Labour,
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M.DHANDAPANI, J.

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