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W.P. No. 15485 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2025

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

W.P. No. 15485 of 2022

and

W.M.P. No. 14646 of 2022

The Management of Tamil Nadu State Transport Corporation Limited
Ponnerikarai
Bangalore-Chennai National Highway
Kancheepuram – 631 552.

... Petitioner

-VS-

1. P.Sankar (Deceased)

2. The Assistant Commissioner of Labour
DMS Compound
Teynampet
Chennai – 600 018.

3. S.Santhi

4. S.Sangeetha

5. S.Vijay Bhaskar
(R3 to R5 are impleaded vide order dated
13.09.2024 in W.M.P. No. 25677 of 2022)

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records relating to the Impugned Rejection Order made in A.P. No. 359 of 2011 dated 18.07.2017 passed by the 2nd respondent herein, and quash the same.



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For Petitioner : Mr. T.Chandrasekaran, Standing Counsel
For Respondents : Mr. S.T.Varadarajulu (RR3 to 5)
R2-Court

ORDER

The petitioner has filed this writ petition challenging the order dated 18.07.2017 made in A.P. No. 359 of 2011 of the second respondent. Through the impugned order, the second respondent has not consented to grant approval to the punishment of dismissal against the first respondent for the alleged lapses on his part.

2. Heard Mr.T.Chandrasekaran, learned counsel for the petitioner and Mr.S.T.Varadarajulu, learned Standing Counsel for the respondents and perused the materials placed on record, apart from the pleadings of the parties.

3. Since the first respondent has died after the filing of the writ petition, the respondent nos. 3 to 5 are impleaded as his legal heirs.

4. The learned counsel for the petitioner submitted that despite the



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petitioner has complied all the essential ingredients settled out in the decision of the Hon'ble Supreme Court of India in ***Lalla Ram -vs- D.C.M. Chemical Works Ltd.*** [(1978) 3 SCC 1], the second respondent has rejected the approval without properly appreciating the merits of the matter.

5. The learned counsel for the third to fifth respondents submitted that in the impugned order, the second respondent has rightly observed that the enquiry has not been conducted by applying the principles of natural justice and the employee has not been paid with one month salary and hence, the approval has been rightly rejected. The position of law on this aspect is well settled in the decision of the Hon'ble Supreme Court of India in ***Lalla Ram -vs- D.C.M. Chemical Works Ltd.*** [(1978) 3 SCC 1] and the second respondent has to appreciate whether the department has complied with all the five ingredients laid down by the Hon'ble Supreme Court of India in the above case.

6. For the sake of convenience, the relevant part of the above judgment is extracted as under:-

"12. The position that emerges from the abovequoted decisions of this Court may be stated thus: In proceedings under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as



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(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.

If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages



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for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

7. In the impugned order, the second respondent has observed that in order to prove the allegation against the deceased first respondent, the petitioner did not examine the essential witnesses. The Driver and the passenger who had already given statement were also not examined as witnesses. Unless the witnesses, who have given statement in respect of the charges made against the deceased first respondent, are examined, the deceased first respondent cannot avail the opportunity to cross-examine them and to prove veracity of their statements. Such an important opportunity was not given to the deceased first respondent during the enquiry proceedings and that would only amount to denial of the fair opportunity.

8. The next ground on which the approval petition has been dismissed is about the non-payment of one month salary stating that the petitioner has chosen to pay the salary and the dearness allowance at 51% to the employee. Even according to the petitioner, the dearness allowance payable to the employee is 58%. As the salary has not been fully paid as discussed by the



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Hon'ble Supreme Court of India in ***Lalla Ram -vs- D.C.M. Chemical Works***

Ltd. [(1978) 3 SCC 1], the second respondent has stated that the key positions settled down in the above case were not followed. As the petitioner did not comply five essential ingredients set out above in ***Lalla Ram's case (supra)***, it is right on the part of the second respondent to reject application seeking approval for his punishment of dismissal.

9. In fine, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

03.02.2025
(2/2)

Index: Yes/No
Speaking order: Yes/No
NCC: Yes/No

Maya

To

1. The Managing Director,
Tamil Nadu State Transport Corporation Limited
Ponnerikarai
Bangalore-Chennai National Highway
Kancheepuram – 631 552.
2. The Assistant Commissioner of Labour
DMS Compound
Teynampet
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R.N.MANJULA, J.

Maya

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**Dated : 03.02.2025
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