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W.P. No.16561 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.16561 of 2022

and

W.M.P. No.15845 of 2022

The General Manager,
Tamil Nadu State Transport Corporation
(Kovai) Limited,
Erode Region,
Chennimalai Road, Erode -1. .. Petitioner

VS.

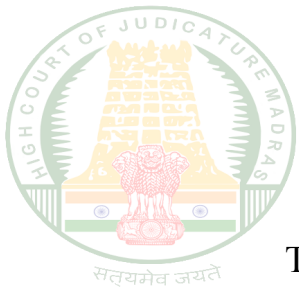
1. S. Periyasamy S/o. Sengodan
2. The Special Joint Commissioner of Labour,
DMS Complex, Chennai .. Respondents

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records in A.P. No.128 of 2020 on the file of the 2nd respondent dated 03.12.2021 and quash the same.

For Petitioner : Mr. Murali Vinoth

For Respondent : Mr.H. Nandhini [for R1]
Mr. E.P. Senniyangiri,
Government Advocate [for R2]

ORDER



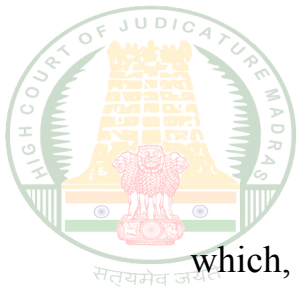
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This Writ petition has been filed by the petitioner to quash the order passed by the 2nd respondent in A.P. No.128 of 2020 dated 03.12.2021, wherein the petitioner Management filed an application to grant approval for the dismissal order passed against the 1st respondent in Disciplinary Proceedings and the same was dismissed.

2. The short facts necessary to dispose the Writ petition are as follows:-

The 1st respondent was working as a Conductor and he was absent for duty from 26.08.2015 onwards. Therefore, a Charge Memo was issued on the 1st respondent on 31.10.2015. The 1st respondent submitted his reply dated 15.12.2015 by stating that he was affected by Jaundice and he was taking treatment. Thereafter, the Management issued a letter to the 1st respondent to join duty on 24.11.2016, in spite of that, he did not join duty. Again on 20.01.2017, a final opportunity was given to the 1st respondent to join duty, but he did not join. However, the 1st respondent submitted his reply dated 20.03.2017 enclosing the copy of Doctor Certificate issued on 15.03.2017 stating that he was affected with Jaundice and he requires 3 months rest. Thereafter, the 1st respondent was issued a notice dated 15.05.2017, for



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which, he submitted his letter stating that he will join duty on 26.06.2017.

Thereafter, the Management had appointed an Enquiry Officer for the charge memo dated 31.10.2015. After receipt of the enquiry notice, the 1st respondent did not attend the enquiry. But he submitted his explanation that due to his ill-health condition, he was not in a position to attend the enquiry proceedings and requested to drop the enquiry proceedings. Though the 1st respondent issued Doctor Certificate on 15.03.2015 and requested 3 months time, thereafter, he did not submit any document during the enquiry proceedings. Therefore, in the domestic enquiry, he was set exparte and as per the enquiry report of the Enquiry Officer, the charges against the 1st respondent were proved and thereafter, the Management issued a 2nd Show Cause Notice on 23.11.2019, but he failed to give any reply. Thereafter, a paper publication was effected on 17.07.2020 and the Management passed an order on 24.08.2020 dismissing the 1st respondent from service. Thereafter, the petitioner Management filed an Approval petition before the 2nd respondent and the same was dismissed by the 2nd respondent. Aggrieved over the same, the present Writ petition has been filed by the Management.

3. The learned counsel appearing for the petitioner would submit that



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the 1st respondent was unauthorizedly absent and already two times, notices were issued on him to join duty, but the 1st respondent failed to join duty and not filed sufficient documents to prove his health condition. Thereafter, a domestic enquiry was conducted, wherein the 1st respondent was set exparte. Thereafter, the Management passed a dismissal order and filed an Approval petition before the 2nd respondent to approve the dismissal order passed by the Management and the same was erroneously dismissed by the 2nd respondent. The 2nd respondent failed to consider that though sufficient opportunities were given to the 1st respondent, he failed to avail those opportunities. After giving sufficient opportunities, the domestic enquiry was conducted and already one month salary was paid to the 1st respondent. In spite of that, the Approval Authority dismissed the petition on the ground that no prima facie case has been proved based on the acceptable evidence. Therefore, the above said observations made by the 2nd respondent declining to grant approval is perverse and the 2nd respondent failed to consider the grave misconduct and unauthorized absence for more than 5 years. Therefore, the order passed by the 2nd respondent is liable to be set aside.

4. The learned counsel appearing for the 1st respondent would submit



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that the 1st respondent was unable to join duty due to his ill-health condition and he was affected by Jaundice and the same was informed to the petitioner Management. However, the petitioner Management, in order to victimize, conducted the domestic enquiry in the absence of the 1st respondent and dismissed the 1st respondent from service. Therefore, no opportunity was given to the 1st respondent and only to victimize the 1st respondent, the petitioner Management appointed an Enquiry Officer after knowing that the 1st respondent was unable to attend duty and the enquiry proceedings due to his ill-health condition. Therefore, the Approval Authority has correctly declined to grant permission to the petitioner Management and the said order is a well reasoned order. Therefore, the present Writ petition is liable to be dismissed.

5. Heard both sides and perused the entire materials available on record.

6. In this case, it is an admitted fact that the petitioner was on unauthorized absence from 26.08.2015 onwards. Thereafter, a notice was issued to the 1st respondent, for which, he submitted his reply stating that due

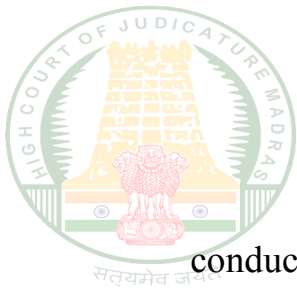


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to his ill-health condition and he was affected by Jaundice, he was not able to attend duty and he also furnished the Doctor Certificate and he assured to join duty after 3 months. But he did not join. Again a notice was issued on the 1st respondent, for which, he has not replied. Thereafter, a domestic enquiry was conducted and after receipt of notice for domestic enquiry, the 1st respondent sent a reply stating that due to his ill-health condition, he was unable to appear for enquiry and requested the Enquiry Officer to drop the enquiry proceedings. But without considering the same, the Management conducted the enquiry.

7. Moreover, the 1st respondent also submitted his explanation along with medical records stating that he was unable to attend duty due to his ill-health and without sanctioning leave to the 1st respondent, the Management ordered for a domestic enquiry and without considering the same, the domestic enquiry was conducted in the absence of the 1st respondent. Therefore, no prima facie case is made out based on the acceptable evidence and no sufficient opportunity was given to the 1st respondent. The Approval Authority in the order stated that when the workman was unable to attend the enquiry and sought for medical leave, without considering the request,



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conducted enquiry without his presence, there is no prima facie case established through acceptable evidence and also observed that without obtaining report from the Medical Authorities, the dismissal order was passed. The above said act of the Management is victimization. Therefore, the Approval Authority has declined to grant approval for the punishment of dismissal from service. The above said order passed by the 2nd respondent is a well reasoned order and there is no perversity or illegality found in the order passed by the 2nd respondent.

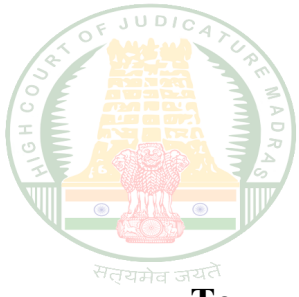
7. In view of the above discussions, this Court is of the opinion that the Writ petition has no merits and deserves to be dismissed.

8. Accordingly, this Writ petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

01.07.2025

Index : Yes/No
Speaking order/non-speaking order
mjs

P. DHANABAL, J.,



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To
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The Special Joint Commissioner of Labour,
DMS Complex, Chennai.

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