



WEB COPY



W.P.No.266 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.266 of 2014

And

M.P.No.1 of 2014 and W.M.P.No.19830 of 2024

Tamil Nadu State Transport Corporation (Salem) Ltd.,
Rep. by the General Manager,
No.12, Ramakrishna Road,
Salem – 07.

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
Chennai.

2.K.Ramachandran

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records in proceeding pursuant to the order passed in A.P.No.87 of 2011 in C1/41352/07 dated 27.12.2012 on the file of the first respondent and quash the same.

For Petitioner : Mr.M.Aswin

For Respondents : Mr.G.Karunanidhi for R1
Government Advocate
Mr.S.Ayyadurai for R2



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ORDER

The petitioner has filed this writ petition seeking to quash the order passed in A.P.No.87 of 2011 in C1/41352/07 dated 27.12.2012 on the file of the first respondent.

2.The facts of the case in brief is that the second respondent was employed as driver in the petitioner Corporation and he was unauthorisedly absent from 08.05.2010 and hence he was issued with charge memo dated 11.06.2010 and after enquiry, he was dismissed from service vide order dated 28.02.2011 and the petitioner filed approval petition before the first respondent under Section 33 (2) (b) of the Industrial Disputes Act and the said approval petition was dismissed by the first respondent. Challenging the same, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner submitted that the second respondent was unauthorisedly absent from 08.05.2010 and hence he was issued with charge memo dated 11.06.2010 and enquiry was conducted and since the Enquiry Officer drawn proven minute, he was dismissed from service vide order dated



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28.02.2011, however, the Labour Court arrived at a conclusion that prima facie evidence is not available to dismiss the second respondent. The learned counsel further submitted that when the second respondent himself admitted that he was absent from 08.05.2010, thereby, he was removed from service, the Labour Court dismissing the approval petition is not sustainable one. The learned counsel further submitted that the service rendered by the second respondent is an essential service and unauthorised absence is a severe misconduct as per Clause 19 (i) (f) of the Certified Standing Order of the Corporation. The learned counsel further submitted that during the pendency of this writ petition, the second respondent was reinstated in service on 09.01.2024.

4.The learned counsel appearing for the second respondent submitted that due to illness, the second respondent could not attend duty from 08.05.2010 and immediately, he sent leave letter along with medical records to the petitioner, however, without considering the same, the order of dismissal was passed and no opportunity was given to the second respondent before concluding the enquiry and hence the Labour Court applying the law laid down in the decision of the Hon'ble



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Apex Court reported in AIR 1978 © 1004 (Lalla Ram Vs. DCM chemical Works), rightly dismissed the approval petition.

5. Heard the arguments advanced on either side and perused the materials available on record.

6. The facts of the case is not in dispute. Admittedly, the second respondent was absent from duty from 08.05.2010. The second respondent claim that he sent leave letter along with medical records to the petitioner and the same was received by the petitioner, however, without considering the same, the order of dismissal was passed and that no opportunity was given to the second respondent before concluding the enquiry and no prima facie case available for issuance of dismissal order. The allegation against the second respondent is not corruption or insubordination and it is only unauthorised absence and for unauthorised absence, the order of dismissal is too harsh and the Labour Court has rightly dismissed the approval petition, which warrants no interference. It also appears that during the pendency of this writ petition, the second respondent was reinstated in service on 09.01.2024.



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7.In view of the above, this writ petition is dismissed. No costs.

Consequently, the connected miscellaneous petitions are closed.

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Special Deputy Commissioner of Labour,
Chennai.



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M.DHANDAPANI,J.
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