



WEB COPY



W.P. No.22648 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.22648 of 2023
and W.M.P. No.22095 of 2023

The General Manager,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
Vellore Region, Rangapuram,
Vellore - 9. .. Petitioner

vs.

1. S. Ramachandran

2. The Special Joint Commissioner of Labour,
D.M.S. Compound, Chennai - 6. .. 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 of the order passed by the 2nd respondent in Approval Petition made in A.P. No.43 of 2021 dated 30.08.2022 and quash the same.

For Petitioner : Mr. S. Pavithra

For Respondent : R1 - Served - No appearance

Mr. E.P. Senniyangiri,
Government Advocate [for R2]

ORDER

This Writ petition has been filed to quash the order passed by the 2nd

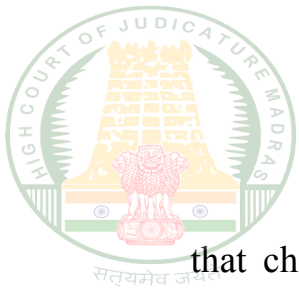


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respondent in Approval Petition in A.P. No.43 of 2021 dated 30.08.2022, wherein, the petitioner Management has filed an Approval Petition before the 2nd respondent as against the 1st respondent herein. The Approval Authority declined to grant approval. Aggrieved by the said order, the present Writ petition has been filed.

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

The 1st respondent was working as a 'driver' in the petitioner Corporation and he was unauthorizedly absent from 09.09.2007 without any prior intimation and the above said act amounted to a grave misconduct. For the above said misconduct, the petitioner Corporation issued a Charge Memo dated 24.10.2017, but no reply was submitted by the 1st respondent. Thereafter, the petitioner Corporation conducted a domestic enquiry and notice was sent to the 1st respondent, but he failed to appear for the domestic enquiry. Again the petitioner issued notice and then he attended the enquiry proceedings. Therefore, the Enquiry Officer conducted enquiry, where the 1st respondent failed to cross examine the Management witnesses, however he was examined as a witness. Thereafter, the Enquiry Officer rendered findings



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that charges against the 1st respondent were proved. After completion of legal formalities, the petitioner Corporation awarded a punishment of dismissal from service to the 1st respondent through an order dated 20.01.2021. Thereafter, the petitioner Corporation filed an Approval petition before the 2nd respondent in A.P. No.43 of 2021 under Section 33(2)(b) of the Industrial Disputes Act and the same was rejected through an order dated 30.08.2022. Challenging the said order, the present Writ petition has been filed by the petitioner Corporation.

3. The learned counsel for the petitioner would submit that the 1st respondent was working as a 'driver' in the petitioner Corporation and he was continuously absent from 09.09.2017 onwards without any prior intimation. Therefore a Charge memo was issued to him, for which, he failed to give any explanation. Thereafter, a domestic enquiry was conducted. In the domestic proceedings also, even after receipt of the notice, the 1st respondent did not participate and again the petitioner issued notice, then only he participated in the enquiry. Therefore, the Enquiry Officer examined the witnesses and rendered findings that charges against the 1st respondent were proved. Thereafter, the petitioner Corporation awarded a punishment of dismissal



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from service and also the Corporation filed an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act for grant of approval and the same was dismissed on the grounds that no prima facie case is made out, no principles of natural justice were followed and there is a victimization and short fall of one month salary. The above said order is against law and the 2nd respondent failed to consider that the 1st respondent, in the domestic enquiry proceedings, actually participated and admitted the guilt and thereafter, he failed to cross examine the witnesses, but he was examined as delinquent side witness. The 1st respondent was unauthorizedly absent for more than 3 years. Therefore, charges against the 1st respondent are grave in nature. But without considering the same, the Approval Authority simply declined to grant permission with erroneous findings. Therefore, the order passed by the Approval Authority is liable to be quashed.

4. No representation on the side of the 1st respondent. Already opportunity was given, but none appeared. The name of the 1st respondent was also printed in the cause list. Therefore, this Court, after hearing the petitioner, is inclined to pass orders in this petition.

5. In this case, there is no dispute that the 1st respondent was absent from 09.09.2017 without prior intimation and he was continuously absented



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for more than 3 years. Thereby, a Charge Memo was issued to the 1st respondent. He received the Charge Memo, but no reply was submitted by him. Thereafter, the Disciplinary Authority decided to conduct the domestic enquiry and in the domestic enquiry proceedings, the 1st respondent participated and admitted the guilt. However, the Disciplinary Authority examined the witnesses. But the 1st respondent stated that 'no cross examination'. Thereafter, the 1st respondent was also examined as witness and he stated that he was absented duty from 09.09.2017 to 08.10.2019, due to his eye injury. But he admitted that no medical certificate was submitted by him. Therefore, the Authority decided that the 1st respondent was unauthorizedly absent without any intimation and therefore, the charges against the 1st respondent were proved.

6. But the Approval Authority, while deciding whether any principles of natural justice have been followed or not, stated that no opportunity was given to the 1st respondent and there is no prima facie case made out on the acceptable evidence and the order of dismissal is for victimisation and no one month salary was paid to the 1st respondent. However, decided the point that approval petition was filed immediately after the dismissal order. The

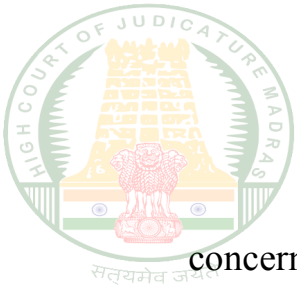


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Approval Authority failed to consider that the 1st respondent himself admitted the charges during the course of disciplinary enquiry and he also tendered his evidence, thereby sufficient opportunity was given to the 1st respondent and the enquiry was conducted in a fair manner. The 1st respondent himself admitted that he has not furnished any medical certificate for the above said period, but the same was not considered by the Approval Authority. Further, the Approval Authority rendered findings that no opportunity was given to the 1st respondent, thereby principles of natural justice have not been followed, there is no prima facie case made out based on the acceptable evidence and there is victimisation. Once the 1st respondent himself admitted the guilt and categorically stated in his evidence that he has not produced any medical certificate, the above said findings of the 2nd respondent / Approval Authority are perverse.

7. As far as the one month salary is concerned, according to the petitioner, his last drawn salary was Rs.11,336/- and the same was paid. The 1st respondent has not denied the receipt of one month salary. However, according to the 1st respondent, minimum wages have not been paid to the 1st respondent. As far as payment of salary below the minimum wages is

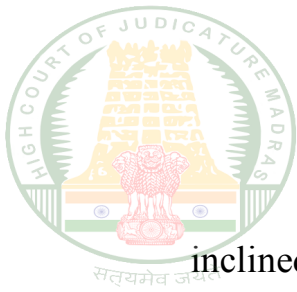


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concerned, the 1st respondent ought to have approached the appropriate Authority under the Minimum Wages Act. The Appellate Authority had to see whether one month salary was paid or not. There is no dispute that one month salary was received by the 1st respondent, but according to him, the minimum wages have not been paid. Therefore, the above said contention cannot be decided by the Approval Authority and the Approval Authority failed to appreciate the facts on proper perspective. Therefore, the order passed by the Approval Authority is not in accordance with law and the same is liable to be set aside.

8. However, the punishment awarded by the petitioner Corporation is too harsh. Once this Court comes to a conclusion that sufficient opportunity was given to the 1st respondent and charges were proved, it is for the petitioner Corporation to award proper punishment. However, the punishment awarded by the petitioner Corporation for the unauthorized absence is disproportionate and shocking conscious. In appropriate cases, this Court can modify the punishment while deciding the Approval petition, under Article 226 of Constitution of India. Considering the past services rendered by the 1st respondent and the nature of charges, this Court is



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inclined to modify the punishment from 'dismissal from service' to 'stoppage of increment for a period of 3 years with cumulative effect'.

6. With the above said modifications, this Writ petition is ***partly allowed***. The punishment imposed by the Disciplinary Authority by dismissing the 1st respondent from service through an order dated 20.01.2021 is modified to the effect that '***stoppage of increment for a period of 3 years with cumulative effect***'. ***The period of unauthorized absence may be treated as leave on loss of pay.*** There shall be no order as to costs. Consequently the connected miscellaneous petition is closed.

15.07.2025

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

To
The Special Joint Commissioner of Labour,
D.M.S. Compound, Chennai - 6.

P. DHANABAL, J.,

mjs



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