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W.P.No.26621 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2025

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

W.P.No.26621 of 2021

and

WMP.Nos.28069 of 2021 and 25252, 25253 & 25256 of 2021

The Management,
Tamil Nadu State Transport Corporation(Kumbakonam) Limited,
Trichy Region, Thiruchirapalli – 620 001. ...Petitioner

Vs.

1. T.Selvakumar
2. The Special Joint Commissioner of Labour,
DMS Campus,
Anna Salai, Chennai. ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order dated 09.08.2021 passed by the second respondent in Approval petition No.84 of 2021 and quash the same, consequently direct the second respondent to approve the order of the petitioner dated 01.12.2018 dismissing the first respondent from service.



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For Petitioner : Mr.M.Murali Vinodh

For Respondents : Ms.S.T.P.Kuilmozhi, for R1
: Mr.K.Surendran, AGP, for R2

ORDER

This Writ petition has been filed seeking quashment of the order of the 2nd respondent dated 09.08.2021 made in A.P.No.84 of 2021 and to consequently direct the 2nd respondent to approve the order of dismissal dated 01.12.2018 passed by the petitioner as against the 1st respondent.

2. The case of the petitioner is that the 1st respondent was employed as a Daily wages Conductor in the petitioner corporation. While joining the duty, the 1st respondent produced his SSLC Certificate and when the petitioner corporation sent the same to the Directorate of Examination for verification, the petitioner came to know that the said document produced by the 1st respondent is a bogus one and the said act of the 1st respondent is a clear violation of standing orders of the petitioner corporation. Thereby, the petitioner corporation issued a charge memo as against the 1st respondent on 16.08.2017, for which, though the 1st respondent sent a reply on 19.08.2017,



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as the same was not satisfactory, the petitioner corporation proceeded with domestic enquiry and after conducting enquiry by affording opportunity, as the charges levelled against the 1st respondent were proved, the petitioner corporation passed an order of dismissal against the 1st respondent on 01.12.2018. Thereafter, the petitioner filed an Approval Petition in A.P.No.84 of 2021 before the 2nd respondent, who in turn rejected the said approval petition, vide impugned order dated 09.08.2021. Challenging the same, the petitioner has come up with this writ petition.

3. Learned counsel for the petitioner corporation submitted that, the 2nd respondent had rejected the approval petition on the ground that there was a delay of about three years, which is not sustainable, since mere delay in filing the approval petition will not vitiate the entire proceedings, While so, rejecting the approval petition filed by the petitioner on the ground that, the same was not filed simultaneously before the authority is not sustainable, as the word simultaneous mentioned is not explained either in the Act or in the rules. Hence, the order of the 2nd respondent is liable to be set aside and accordingly, prayed for appropriate orders.



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4. Per contra, the learned counsel appearing on behalf of the 1st respondent submitted that, though the 1st respondent was dismissed from service on 01.12.2018, however, the petitioner corporation had filed the approval petition only on 12.04.2021 with a delay of about three years, which is an incurable defect as per the decision of the Hon'ble Division Bench of this Court in the case of ***The Management, Tamil Nadu State Transport Corporation (Salem) Limited Vs. C.Iyandhurai and anr.*** (W.A. No.1555 of 2022) dated 01.08.2022. For better appreciation, the relevant portion of the said order is extracted hereunder:

“The Writ Appeal has been filed against the order passed by the learned Single Judge refusing to interfere with the order passed by the second respondent-Authority in dismissing the appellant-Management's approval petition under Section 33(2)(b) of the Industrial Disputes Act, 1947. The rejection of the approval petition was on the ground that there was shortfall in payment of one month salary to the first respondent-employee and there was eight days delay in filing the approval petition. The learned Single Judge, while adverting to Section 33(2)(b) of the Industrial Disputes Act, 1947, read with Rule 64(2) of the Industrial Disputes Rules, 1958, observed that an application seeking approval of dismissal of an employee needs to be served with the order of



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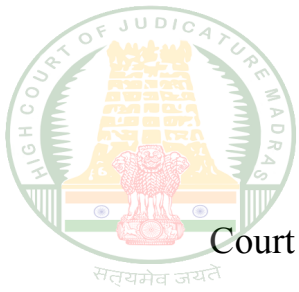


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punishment and simultaneously, approval application has to be filed before the Authority, and otherwise, the approval petition cannot be entertained and hence, the learned Single Judge observed that the second respondent-authority rightly rejected the approval petition. In view of the above, the learned Single Judge, while not interfering with the order passed by the second respondent-authority in dismissing the approval petition, made it clear that the first respondent-employee would be entitled to all monetary benefits due to him and the appellant-Management was expected to extend the same and the period for compliance was also given by the learned Single Judge. Looking into the order passed by the learned Single Judge, we find no ground made out to entertain the Writ Appeal, which is accordingly dismissed. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.”

5. On the above said contentions, heard learned Additional Government Pleader appearing on behalf of the 2nd respondent and perused the materials available on record.

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



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Court in ***Lalla Ram Vs. D.C.M. Chemical Works Ltd. and Ors.***, reported in

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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."

7. From the materials available on record it is evident that the approval petition was not filed simultaneously when the order of dismissal had come to be passed. It is even the admitted case of the petitioner that there is a delay of about three years. It is the consistent view of the courts



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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. Appreciating the materials in proper perspective, the Labour Court has rejected the approval petition, which cannot be said to be erroneous. Further, the decision of the Division Bench of this Court in *C.Iyandhurai* case (*supra*) is also in line with the decision of this Court.

8. For the reasons aforesaid, this Writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

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

M.DHANDAPANI, J.

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To

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DMS Campus, Anna Salai, Chennai.
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