



WEB COPY

WP No. 5779 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-04-2025

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THE HONOURABLE MR JUSTICE M.DHANDAPANI

WP No. 5779 of 2019

AND WMP NOs. 6605 and 8311 OF 2020

1. The Management

Tamil Nadu State Transport
Corporation (Salem) Limited, Bharathi
Puram, Salem Main Road,
Dharmapuri - 5 Dharmapuri.

Petitioner(s)

Vs

1. C.Sivaperumal

S/o. Mr. Chinnasamy,
Perisagowndampatti Village,
Vagurampatti Post, Arur Taluk,
Dharmapuri DistrictDharmapuri

Respondent(s)

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Calling for the records relating to the Order dated 29.08.2017 passed by the Special Deputy Commissioner of Labour, Chennai in A.P.No. 482 of 2012 and quash the same.

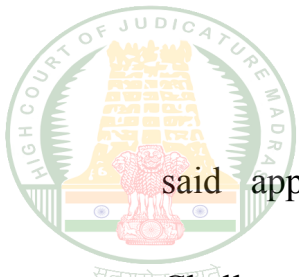
For Petitioner(s): MR.ASWIN

For Respondent(s): Ms. S.Ramapriya
Gopalakrishnan,

**ORDER**

WEB COPY This Writ petition has been filed seeking to quash the Order dated 29.08.2017 passed by the Special Deputy Commissioner of Labour, Chennai in A.P.No. 482 of 2012.

2. The case of the petitioner is that the respondent/workmen was appointed as a temporary driver in the petitioner corporation and he caused a fatal accident on 03.11.2010 due to his rash and negligent driving, for which, the petitioner corporation issued a charge memo dated 16.12.2010. Though the respondent sent a reply, as the same was not satisfactory, the petitioner corporation proceeded with enquiry proceedings and after conducting enquiry by affording appropriate opportunity, as the charges levelled against the respondent were proved, the petitioner corporation passed an order of dismissal against the respondent on 03.08.2012. Parallely, the petitioner corporation sought approval before the Special Deputy commissioner of Labour, Chennai under Section 33(2)(b) of the Industrial Disputes Act, 1947 and the same was taken up on file in A.P.No.482 of 2012. However, the Labour Court rejected the



said approval petition, vide present impugned order dated 29.08.2017.

Challenging the same, the petitioner is before this Court.

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3. Learned counsel for the petitioner corporation submitted that, the Labour Court had rejected the approval petition on the ground that there was a delay of seven days, 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 Labour Court is liable to be set aside and accordingly, prayed for appropriate orders.

4. Per contra, the learned counsel appearing on behalf of the respondent submitted that, though the respondent was dismissed from service on 03.08.2012, however, the petitioner corporation had filed the approval petition with a delay of about seven days, which is an incurable defect as per the



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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 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



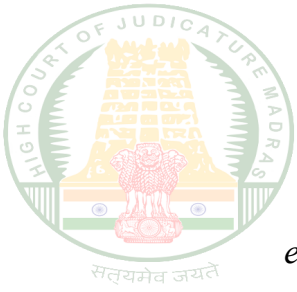
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respondent-authority in dismissing the approval petition, made it clear that the first respondent-employee would be entitled to all monetary benefits due to him and the appellant-Management was expected to extend the same and the period for compliance 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. Heard the learned counsel on either side 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 Court in ***Lalla Ram Vs. D.C.M. Chemical Works Ltd. and Ors.***, reported in ***AIR 1978 SC 1004***, wherein the Supreme Court held thus :-

“(i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;



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(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 seven days. It is the consistent view of the courts 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.

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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.

09-04-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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M.DHANDAPANI J.

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To

1. The Management

Tamil Nadu State Transport Corporation (Salem) Limited, Bharathi Puram,
Salem Main Road,
Dharmapuri - 5 Dharmapuri.

2. The Special Deputy Commissioner,
The Labour Court, Chennai.

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