



W.P.(MD)No.13196 of 2018

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

**W.P.(MD)No.13196 of 2018
and W.M.P.(MD)No.12040 of 2018**

The Management,
Tamil Nadu State Transport Corporation
(Madurai) Ltd.,
Madurai Region, Bye-Pass Road,
Madurai-625 010.

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
O/o.Commissioner of Labour,
Teynampet, Chennai-600 006.

2.S.Sankaravelu

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 1st respondent in his proceeding in Approval Petition in A.P.No.261/2013 dated 14.09.2017, quash the same.



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For Petitioner : Mr.J.Senthilkumaraiah

For Respondents : Mr.A.Mu.Sharavanan for R2
No Appearance for R1

ORDER

This Writ Petition has been filed aggrieved by an order dated 14.09.2017 passed by the respondent No.1, rejecting an application filed under Section 33(2)(b) of the Industrial Disputes Act, 1947, whereby the petitioner sought approval for dismissing the respondent No.2 from service on the ground of unauthorised absence.

2. The first respondent, having framed five issues for consideration, decided four out of five issues in favour of the petitioner ie., issue Nos.1, 2, 4 and 5. There is no contest against the conclusions arrived by the respondent No. 1 on those issues. However, the first respondent on issue No.3 came to the conclusion that the punishment of dismissal from service imposed on respondent



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No.2 amounts to an act of retaliation and unfair labour practice. Having held so, the first respondent refused to grant approval for an order of dismissal passed by the petitioner against respondent No.2. As seen from the impugned order, the charge framed against the respondent No.2 is that respondent No.2 was absent from work continuously for more than 10 days from 08.08.2012 as alleged in the charge memo dated 10.09.2012. However, it is submitted by the learned counsel for the petitioner that the respondent No.2 was absent for more than 480 days and therefore, the punishment of dismissal from service was imposed on the respondent No.2/workman. Even assuming that the absence of the respondent No.2 from duty either for 10 days or 480 days, unless it is alleged that the said absence is willful and deliberate, the same does not amount to misconduct as held by Hon'ble Apex Court in catena of decisions. The Hon'ble Apex Court in a series of judgment came to the conclusion that the imposition of a capital punishment of dismissal or removal from service on the charge of unauthorised absence without alleging that the said unauthorised absence is a willful and deliberate is a punishment shockingly disproportionate to the charge.



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3. Perhaps the first respondent keeping all these in view appears to have come to the conclusion that the action of the petitioner herein in imposing punishment of dismissal from service is harsh and amounting to unfair labour practice. As contended by the learned counsel for the respondent No.2, this is the first occasion where the respondent No.2 was absent and the said absence is treated as unauthorised absence, because he being a daily wage employer does not have any entitlement of leave whatsoever nature and under compelled circumstances, respondent No.2 has to remain absent from his duties. As seen from the explanation submitted by the respondent No.2 in response to the final show cause notice also it is noticed that the respondent No.2 requested for employment after issuing of the charge memo, but the respondent No.2 was not provided such an employment.

4. In the light of the above, this Court does not find any error or illegality in the conclusion arrived at by the first respondent concluding that the action of the petitioner herein imposing for punishment of dismissal from service for the unauthorised absence on the respondent No.2 as unfair labour practice.



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5. In the light of the above, this Court does not find any merit in the

Writ Petition and accordingly, the same is dismissed. However, it is made clear that the respondent No.2 being a daily wage employer may not be entitled for any backwages. However, the petitioner shall take necessary steps for reinstatement of the respondent No.2 as daily wage employer forthwith. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

04.04.2025

Neutral Citation: Yes / No

Index : Yes / No

vsm

To

The Special Deputy Commissioner of Labour,
O/o.Commissioner of Labour,
Teynampet, Chennai-600 006.



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MUMMINENI SUDHEER KUMAR, J.

vsm

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