



WP(MD)No.8802 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.8802 of 2022 and
WMP(MD)No.6411 of 2022**

The Management of
Tamil Nadu State of Transport Corporation,
(Kumbakonam) Limited,
Karaikudi Region through its
General Manager,Karaikudi.

...Petitioner

Vs

1.The Special Joint Commissioner of Labour,
DMS Complex, Teynampet,
Chennai.

2.M.Kannan

...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records in the impugned order passed on 21.12.2021 in Approval Petition No.119 of 2019, set aside the order.

For Petitioner	: Mr.P.Balasubramanian
For Respondent	: Mr.S.Vinodh,
No.1	Government Advocate
For Respondent	: Mr.T.Antony Arul Raj
No.2	



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ORDER

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The management of Tamil Nadu State Transport Corporation, Kumbakonam has filed this writ petition as against the order passed by the 1st respondent in approval petition No.119 of 2019, dated 21.12.2021. The petitioner management has initiated disciplinary proceedings as against the 2nd respondent for his unauthorised absence from 12.09.2015 to 12.05.2018 and he was imposed with punishment of dismissal by order dated 31.08.2019. Since the industrial dispute was pending before the 1st respondent, the management has submitted this order of punishment for its approval as required under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the 1st respondent. The 1st respondent authority has not approved the order of dismissal on the ground that the dismissal order was not passed on acceptable evidence and one month salary was not paid to the 2nd respondent. Aggrieved by that order of the 1st respondent dated 21.12.2021, the management has preferred this writ petition.

2.The learned counsel for the petitioner management submits that the 2nd respondent was irregular on his duty and he was continuously absent for duty from 12.09.2015 to 12.05.2018 for more than 1100 days.



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For this misconduct of the 2nd respondent, charge memo was issued to him and after his reply, domestic enquiry was conducted by appointing enquiry officer. The enquiry officer has submitted his report dated 01.02.2019 that the charges are proved. Thereafter the 2nd show cause notice was issued to the 2nd respondent and after his reply to the 2nd show cause notice, the order of dismissal was passed on 31.08.2019. According to the learned counsel, apart from this unauthorised absent, the 2nd respondent was unauthorisedly absent for 15 times on different occasions in the past and he was also imposed with punishments for the same. Therefore, by considering this period of unauthorised absence and the previous conduct, an order of dismissal has been passed as against the said employee. He further submits that the approval petition was filed on the same day of dismissal and he was also paid with one month salary of Rs.22,518/- through a cheque. While so the authority has come to the conclusion that the salary as required to be paid to the 2nd respondent was not paid and that the order of dismissal has not been substantiated by acceptable evidence.



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3. On the other hand the authority decided the other issue that fair and proper enquiry was conducted and that there was no victimisation as against the 2nd respondent. While so the officer has come to the conclusion that fair and proper enquiry was conducted, he ought not to have decided that there was no acceptable evidence for passing the dismissal order.

4. The learned counsel for the petitioner by referring to the scope under Section 33(2)(b) of the ID Act submits that the authority is supposed to ascertain whether the procedures laid down are adopted in imposing the punishment or not, but he should not go beyond the scope to find out the validity of the evidence. He further submits that the findings of the authority that one month salary as required to be paid, has not been paid, is not correct, when the copy of the cheque for Rs.22,518/- was produced. The question of examination of the General Manager was not at all required in the enquiry, whereas the authority has decided that the general manager has not been examined and that there is no acceptable evidence from the side of the management. Therefore, the order passed by the authority is not proper and it needs to be set aside.



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5.The learned counsel further submits that whether the order of dismissal is on proper evidence or not, it is a matter to be decided by the Labour Court and not by the 1st respondent authority on the approval petition. He has also relied on the judgment of the Hon'ble Supreme Court in *North Eastern Karnataka RT Corpn Vs Ashappa [(2006) 5 SCC 137]*.

6.The learned counsel for the respondent submits that the petitioner management has adopted unfair labour practice by dismissing the 2nd respondent when he has applied for medical leave that too due to certain ailments. The 2nd respondent was working as a driver in the transport corporation and he was suffering with issues in his spine. Therefore, he was not in a position to drive the vehicle and he had also applied for alternate employment. But that was not considered by the management and he was not provided with alternate employment. Instead he was referred to the medical board for examination and the medical board after examining him opined that he was not fit for the post of driver and he should be provided with alternate employment. Even thereafter the management has not provided him alternate employment.



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7.The learned counsel by referring to the provisions under Section 47 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and Section 20 of the Rights of Persons with Disabilities Act, 2016 submits that since the 2nd respondent was working as driver and he was also suffering with certain ailments on the spine, he ought to have been provided with alternate employment as required under the Act. However they have initiated disciplinary proceedings and imposed the punishment of dismissal. Therefore, it is unfair labour practice adopted by the petitioner management. The learned counsel for the 2nd respondent has also referred to the documents such as the application submitted for medical leave, his reference to the medical board for examination and the certificate issued by the doctor attached the transport corporation.

8.This court has considered the rival submissions made and perused the materials placed on record.

9.The 2nd respondent employee was dismissed from service for his unauthorised absence from 12.09.2015 to 12.05.2018. The 2nd respondent



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has submitted application seeking medical leave on 25.07.2016.

According to him, he has made application even in the month of August 2015. The application for medical leave was considered by the management only on 23.03.2018 by referring the 2nd respondent to the medical board. The report of the medical board has not been divulged to the 2nd respondent. Apart from this medical board, the petitioner was also examined by the medical practitioner of the TNSTC, Karaikudi. The Doctor attached to the TNSTC has also given opinion that he is having certain ailments on this backbone and therefore, he is not fit for driving and he must be provided alternate employment. Though the petitioner management has referred the 2nd respondent to the medical board, he was not provided with alternate employment and this fact has not been considered in the disciplinary proceedings. Hence this court is of the view that the 2nd respondent was dismissed from service by adopting unfair labour practice. Therefore, this court is not inclined to interfere with the orders of the 1st respondent authority. It is reported by the learned counsel for the 2nd respondent that the 2nd respondent attained the age of superannuation on 31.05.2024. He was not provided with alternate employment. He was on leave from 12.07.2015 to 12.05.2018 and was on



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leave till he attained the age of superannuation. Under such circumstances, instead of driving the 2nd respondent to the Labour Court for his claim if any, this court while dismissing this writ petition also directs the petitioner management to settle the benefits to the employee without any back wages for the eligible period as expeditiously as possible. No costs. Consequently connected miscellaneous petitions are closed.

18.11.2025

DSK

To

The Special Joint Commissioner of Labour,
DMS Complex, Teynampet,
Chennai.



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B.PUGALENDHI.J.,

DSK

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