



W.A(MD) No.903 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 01.07.2025

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.A(MD) No.903 of 2023
and
C.M.P.(MD)No.7150 of 2023**

The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
By-pass Road,
District Collector Officer Post,
Dindigul-624 004.

... Writ Petitioner / Appellant

Vs.

1.The Special Deputy Commissioner of Labour,
Office of the Commissioner of Labour,
Chennai-600 006.

2.R.Radhakrishnan

... Respondents / Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order passed in W.P.(MD)No.1439 of 2014 dated 24.08.2022.



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For Appellant : Mr.S.C.Herold Singh

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader
for R1

: Mr.S.Arunachalam
for R2

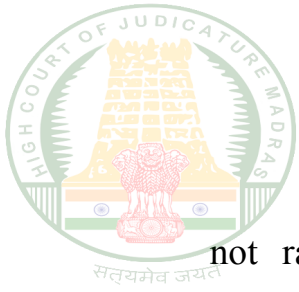
JUDGMENT

(Judgment of the Court was made by **G.R.SWAMINATHAN, J.**)

Heard both sides.

2. The management is on appeal challenging the order dated 24.08.2022 passed by the learned single Judge dismissing W.P.(MD)No. 14390 of 2014. It was the management which filed the said writ petition challenging the order dated 27.12.2012 passed by the Special Deputy Commissioner of Labour, Chennai dismissing the Approval Petition No. 392 of 2011 on 27.12.2012. The second respondent herein Thiru.Radhakrishnan was employed as conductor in the appellant corporation. He was accused of having misappropriated a sum of Rs.39/-. In this regard, the domestic enquiry was conducted and he was dismissed from service on 08.01.2008. Interestingly, Radhakrishnan did

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not raise any industrial dispute. Instead, he approached the first respondent herein by submitting a representation dated 4.10.2011 and nudged the said authority to call upon the management to offer their remarks as to why the approval petition was not filed. Even though the management originally took the stand that approval from the authorities is not required under Section 33(2)(b) of the Industrial Disputes Act, later they submitted an approval petition. By then, there was delay and there was a clear breach of the statutory procedure. Therefore, on that ground, the authority dismissed the approval petition also. The learned single Judge in his order dated 24.08.2022 rightly held that if the management was of the view that there was no need to seek approval from the authorities, they should not have filed an approval petition at all even if it was insisted by the first respondent. In fact, the approval petition should have been filed simultaneously while passing the order of dismissal. In the present case, long after dismissing the second respondent herein, the approval petition was submitted.



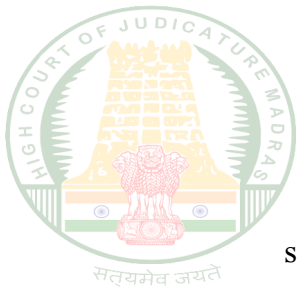
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3. Paragraph Nos.6 & 7 of the order of the learned single Judge

read as follows:-

“6. It is made clear from Section 33(2) of the Industrial Disputes Act, 1947, that if a workman is involved in any matter not connected with the pending Industrial Dispute, the employer can alter the conditions of service for any misconduct not connected with the dispute. It may discharge or punish the workman subject to payment of one month's wage and file an application to the authority for approval of the action taken by the employer.

7. In the case on hand is that admittedly, the second respondent was dismissed from service on 08.01.2008 and the Approval Petition was filed only on 30.09.2011. According to the learned counsel for the petitioner, there was no industrial dispute pending concerning workman and it was not necessary to seek approval for dismissal. However, the first respondent insisted for filing the Approval Petition and therefore, the Approval Petition was filed by the petitioner. The petitioner cannot take such a plea that the Approval Petition was filed at the instance of the first respondent. If it is of the firm view that there is no industrial dispute pending concerning workman and therefore, there is no need to seek approval for the dismissal order, it should not have filed the Approval Petition even it was insisted by the first respondent. Having filed the Approval Petition, it is not open to the petitioner to contend that the



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second respondent ought to have raised industrial dispute before the

Labour Court under Section 33A of the Industrial Disputes Act.

Admittedly, there is a delay in filing the Approval Petition. The contention is that one month salary was not paid immediately and it is found that one month salary was not paid in time. When it is clearly established that Approval Petition was not filed immediately, the rejection of Approval Petition by the authority, in the considered opinion of this Court, is deserved to be confirmed.”

4. We are of the view that the order of the learned single Judge cannot be faulted. It is true that approval need not be obtained under Section 33(2)(b) of the Industrial Disputes Act, 1947 under all circumstances. According to the management, the condition precedent for invoking the said provision did not obtain in this case. If that be so, nothing stopped the management from ignoring the rejection order passed by the approving authority. Probably, the management was not sure about its own stand. That is why, it challenged the rejection order by filing a writ petition followed by this writ appeal. The approving authority went by the basic parameters. It is well settled that an approval petition has to be submitted simultaneously or within reasonable time



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after the passing of the termination order. In this case, the petition was submitted belatedly and on this ground, rejection order was passed. The ground of rejection cannot be faulted. It was not within the province of the authority to consider if the approval petition ought to have been filed at all. This was a call which the management should have taken. Having invited an order, the management cannot call upon this Court to render a finding that they need not have gone before the approving authority in the first instance.

5. At the same time, in order to give a quietus to the issue, we called upon the learned counsel for the employee to make a statement as to whether he is giving up a portion of the backwages. On instructions from the second respondent / employee, the learned counsel submitted that the employee would forgo 50% of the backwages. But he would insist that the employer's contribution to EPF must be made by the Management. This stand of the employee is quite fair.



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6. Even while dismissing the writ appeal, we direct the management to settle the retirement benefits of the employee as mentioned above. In other words, 50% backwages must be paid and the employee would be entitled to all the pensionary benefits. The management shall settle the monetary benefits within a period of twelve weeks from the date of receipt of a copy of this order.

7. The writ appeal is dismissed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) (K.R.S., J.)
01.07.2025

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Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To

The Special Deputy Commissioner of Labour,
Office of the Commissioner of Labour,
Chennai-600 006.

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AND
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