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W.P.No.20999 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2026

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.20999 of 2025
and W.M.P.No.23729 of 2025

The Management of
Tamil Nadu Transport Corporation (Kovai) Ltd.
Erode Region, Chennimalai Road
Erode.

.. **Petitioner**

Vs.

1.P.Venkatachalam
S/o Palaniappa Gounder
No.5/2, Banndikadu
Padaiveedu Post
Komarapalayam Taluk
Namakkal District – 637 303.

2.The Special Joint Commissioner of Labour
DMS Compound, Chennai – 600 006.

.. **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records relating to the Award in A.P.No.105 of 2023 dated 15.07.2024 on the file of the Special Joint Commissioner of Labour, Chennai, the 2nd respondent herein and quash the same and to pass such further or other orders.



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For the Petitioner : Mr.T.Chandrasekaran
For the Respondents : Mr.S.R.Karthikeyan
for R1
Mr.A.M.Ayyadurai
Government Advocate for R2

ORDER

This Writ Petition is filed challenging the award made in A.P.No.105 of 2023 dated 15.07.2024. By the said award, the approval sought for by the petitioner/Management for dismissing the 1st respondent/employee from service was refused by the 2nd respondent/Approving Authority.

2. Upon hearing *Mr.Chandrasekaran*, the learned counsel for the petitioner and perusing the material records of the case, it is the case of the petitioner that the 1st respondent was working as a driver and while so in the year 2011 onwards he was given lighter duty on account of an injury in his lumbar region. While so, he was referred to the medical board in the year 2018. The medical board has stated that he has got permanent disability of an extent of 10%, therefore, the 1st respondent was again directed to report for driving duty. Stating that he has not been given an alternative duty, the employee did not report for work. Therefore treating the same as an unauthorized absence, a charge memo was issued and due



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departmental enquiry was conducted and thereafter by an order dated 05.07.2023, the punishment of dismissal from service was imposed and subsequently, an approval is sought, as per the settlement entered into between the employee and the Management.

3. The approving authority after framing five questions as mandated by the Hon'ble Supreme Court in ***Lalla Ram Vs. D.C.M.Chemical Works Limited***¹ and held that there is no *prima facie* evidence to prove the charge. It further held that one month salary was not properly paid. Firstly, it must be seen that when the enquiry was fair and proper and when all the evidences were produced before the authority, especially when the medical board has categorically given the finding that the permanent disability is of 10% and the same is duly marked as a document in the domestic enquiry as well as before the authority, the finding of the authority that there is no *prima facie* evidence is incorrect. Secondly, one month salary has been properly paid to the employee, which is also not considered by the authority.

¹ (1978) 3 SCC 1
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4. *Mr.S.R.Karthikeyan*, the learned counsel appearing on behalf of the 1st

respondent would submit that the judgment of the Hon'ble Supreme Court of India in ***Kunal Singh Vs. Union of India and another***² has categorically stated that the attaining of benchmark disability of 40% is totally a different concept. As far as the employee in this case is concerned, the functional disability whether the employee is able to perform the work has to be seen and the issue has been conclusively decided by the Hon'ble Supreme Court of India and has been followed in many of the judgments, which included the petitioner Management also. Therefore the authority erred in considering only the percentage of disability. Even in the said certificate it has been held that 10% permanent disability is there. When the petitioner is involved in a job of driving, the disability cannot be ignored and the lives of the employee as well as the passengers cannot be risked. There is no opinion from the medical board that the 1st respondent/employee is fit to be a driver. With reference to the salary, when the previous month salary slip mentions the basic salary as Rs.35,000/- whereas in the salary slip for the purpose of calculating the one month wages in the said slip, the basic wage was mentioned as Rs.32,700/-. Therefore the same was also taken into account by the authority. Even the approval was also not

² (2003) 4 SCC 524



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simultaneously filed is also taken into account.

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5. I have considered the rival submissions made on either side and perused the material records of the case.

6. Firstly, when the 1st respondent was originally working as a driver and initially found to be not fit to carry on the duty of the driver in the year 2011 and being continued as such till the year 2019, the management if wanted to evaluate the 1st respondent, ought to have addressed the medical board to give its opinion that whether the employee is fit enough to carry out the functions of the driver. It doesn't seem to be the case. The medical board has not answered the question whether the petitioner is fit to be a driver or not. Instead, it had only analyzed the percentage of disability and stated that the employee had permanent disability of 10%. Therefore, without even ascertaining the opinion of the experts, as to whether there was any functional disability or not and whether the workman could have still perform the duty of the driver or not, the management issued charge memo and proceeded with the issue. Therefore when the authority has taken into consideration of all the above and the earlier proceedings by which the light duty was given to the employee, the finding of the authority cannot be said

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to be a perverse finding or an impossible view. The Management instead of posing the right question to the board and ascertaining whether the person is fit to be a driver or not, chose to act upon the mere finding of the percentage of disability and therefore the authority has rightly not granted the approval. Further it is now settled law that the Management which is choosing to calculate and make all kinds of calculations, pay less salary is putting itself into risk and even if it pays Rs.1/- less than the salary, that would have been received by the employee in the month following the period of non employment, then it is not merely technical in nature but it is to be considered as a violation of section 33 of the Industrial Disputes Act, 1947, itself. Therefore on that score also the award passed by the 2nd respondent is correct. At this juncture, even after reinstatement the Management could have referred the workman for evaluation and acted according to the medical opinion, but it is stated that the employee has attained the age of superannuation.

7. In view of the above reasoning, this Writ Petition is dismissed. The petitioner/Management is directed to treat the 1st respondent/employee as on duty and pay all the benefits due to him including back wages and the retiral benefits within a period of three months from the date of receipt of the website uploaded

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copy of this order without waiting for the certified copy. No costs. Consequently,
the connected miscellaneous petition is closed.

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Neutral Citation : No

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To
The Special Joint Commissioner of Labour
DMS Compound, Chennai – 600 006.



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D.BHARATHA CHAKRAVARTHY, J.

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