

The Management Vs D.Dhandapani

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Court : Chennai

Decided On : Jul-10-2025

Judge : Honourable Mr.Justice P. Dhanabal

Appeal No. : WP/11648/2022

Appellant : The Management

Respondent : D.Dhandapani

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL and W.M.P. No.11118 of 2022 The Management, Tamil Nadu State Transport Corporation (Kovai Division) Limited, No.37, Mettupalayam Road, Coimbatore - 641 043. .. Petitioner vs.

1. D. Dhandapani Conductor C25582

2. The Special Joint Commissioner of Labour,

DMS Complex, Chennai. .. Respondents PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records in A.P. No.83 of 2020 on the file of the 2nd respondent dated 14.01.2022 and to quash the same. For Petitioner : Mr. A. Sundaravadhanan For Respondent : Mr.S.T. Varadarajulu [for R1] Mr. E.P. Senniyanigiri, Government Advocate [for R2]

ORDER

This Writ petition has been filed by the petitioner Management to quash the order passed by the 2nd respondent in A.P. No.83 of 2020 dated 14.01.2022, wherein the petitioner has filed an Approval Petition for granting approval for the punishment of dismissal from service to the 1st respondent imposed in the disciplinary proceedings under Section 33(2)(b) of the Industrial Disputes Act. The Approval Authority declined to grant approval and dismissed the approval petition. Against which, the present Writ petition has been filed.

2. The short facts necessary to dispose of the Writ petition are as

follows:- The 1st respondent joined as a Conductor on 24.12.2013 and on 26.06.2019, the Cashier, Palladam Branch, had collected the collection amount from the bus conductors and kept the same in a safe place (bureau). While so, on 26.06.2019, after the shift collection, the safe room was closed and the keys were handed over at the gate by Cashier on that particular ending

shift. The employee who took charge for the next shift found that the safe place was opened and the mirrors were kept separately in that room. Thereafter, immediately, the same was informed to the concerned Authorities and the Branch Manager had lodged a complaint to the Palladam Police and found that a sum of Rs.2,82,250/- was missing. The police officials commenced the investigation and obtained the fingerprints

of all the Staff members, who were on duty on that day, were taken. The 1st respondent's finger prints had tallied with the finger prints collected from the scene of crime. Thereafter, the Police recovered cash from the 1st respondent and a criminal case was also registered under Section 381 of IPC in Cr. No.698 of 2019 and the same is pending. Therefore, the 1st respondent was issued with a Charge Memo on 23.07.2019 and he had replied for the same. Being not satisfied with the reply, the Management conducted a domestic enquiry. As per the enquiry report, the charges against the 1st respondent were proved. Thereafter, the Management awarded punishment of dismissal from service. The petitioner Management filed a petition under Section 33(2)(b) of the Industrial Disputes Act before the 2nd respondent for grant of approval and the same was dismissed. Aggrieved by the said dismissal order, the present Writ petition has been filed by the Management.

3. The learned counsel appearing for the petitioner would submit that

the 1st respondent was working as a 'Conductor'. While so, on 26.06.2019, the Cashier kept the amount collected from the Conductors in a safe place and on the next day, the said amount was found missing and thereafter, a Police complaint was lodged and the Police officials lifted the finger prints and thumb impressions from all the Staff members. The finger prints of the 1st respondent had tallied with the finger prints collected from the scene of crime. Therefore, an FIR has been registered against the 1st respondent and a Charge Memo was issued and the same was replied by the 1st respondent. After perusing the reply given by the 1st respondent, the Management decided to conduct a domestic enquiry. In the domestic enquiry proceedings, the 1st respondent had also participated. Thereafter, the Enquiry Officer rendered findings that the charges levelled against the 1st respondent were proved. Thereafter, the Disciplinary Authority awarded punishment of dismissal from service. In the meantime, the petitioner filed an Approval Petition before the 2nd respondent, but the 2nd respondent erroneously declined to grant

approval on the ground that no documents with respect to enquiry proceedings were produced to ascertain whether the principles of natural justice were followed and whether any prima facie case is made out based on the acceptable evidences and whether there is any victimization. In fact, the petitioner Management produced all the documents before the Approval Authority, but the Approval Authority recorded that no documents regarding the enquiry proceedings were marked. Even no records were furnished by the Management, the Approval Authority would have given opportunity to the petitioner for production of those documents by calling the records, but no such opportunity was given. Therefore, the matter may be remanded back to the 2nd respondent for production of documents.

4. The learned counsel appearing for the 1st respondent would submit

that already ample chances were given to the petitioner Management before the Approval Authority, in spite of that, the petitioner did not produce any documents relating to the enquiry proceedings. Therefore, the Approval Authority has passed a reasoned order. However, if the Court is inclined to remand back the matter for production of documents, the petitioner is entitled to wages. Therefore, prayed to dismiss the petition.

5. Heard both sides and perused the entire materials available on record.

6. In this case, the petitioner Management issued a Charge Memo to

the 1st respondent for the grave charge for committing theft of money from the petitioner Management. It is an admitted fact that an FIR has been registered as against the 1st respondent in Cr. No.698 of 2019 under Section 381 of IPC and the same is pending and the 1st respondent was under judicial custody. Thereafter, a domestic enquiry was conducted by the petitioner Management and the 1st respondent

was imposed a punishment of dismissal from service. While applying for approval, before the 2nd respondent, the petitioner Management has not produced the documents relating to the enquiry proceedings, thereby, the Approval Authority declined to grant approval. If the petitioner failed to produce the relevant documents, it is the duty of the Authority to call for records from the petitioner, but the Approval Authority has not exercised the power as per the law laid down by the Hon'ble Supreme Court in John D'Souza vs. Karnataka State Road Transport Corporation reported in (2019) 18 SCC 47. As per the above said judgment, if the Authority failed to produce the documents, the Tribunal can call for the records. But that discretionary power has not been exercised by the Approval

Authority. Therefore, as rightly contended by the learned counsel appearing for the petitioner, it is appropriate to remand back the case for fresh consideration by calling for the records by giving chance to the Management. Therefore, the order passed by the Approval Authority is set aside and the matter is remanded back to the Approval Authority and the petitioner Management is at liberty to produce the relevant documents before the Authority.

7. At this juncture, the learned counsel appearing for the respondents

has relied upon a judgment in The Management, Tamil Nadu State Transport Corporation vs. P. Velu and another in W.P. No.31140 of 2018, wherein this Court held in Para No.6 as follows:- "Though the 1st Respondent/employee has already filed a Petition claiming wages under Section 17-B of the Industrial Disputes Act, 1947, the same may not be applicable under Section 33(2)(b) of the Act, as mere wrong quoting of the provision will not take away the rights accrued to an employee. In view of the decision rendered by the Apex Court in the case of Rajeshwar Mahto vs. Alok Kumar Gupta reported in (2018) 4 SCC 341, the employer must pay wages from the date of dismissal of the employee

till the order of the Authority is set aside and the original order of dismissal is restored to file. The wages drawn shall be paid before the commencement of the proceedings, as this Court permits the employer to produce all the documents to establish the charges.

Since the petitioner prayed to remand back the case, he has to pay wages to the 1st respondent before commencement of the proceedings.

8. In view of the above, this Writ petition is allowed. The order passed

by the 2nd respondent in A.P. No.83 of 2020 is set aside and the matter is remanded back to the 2nd respondent for fresh disposal and the parties are at liberty to produce the required documents and the 2nd respondent is directed to dispose the proceedings within 3 months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

10.07.2025 Index : Yes/No.

Speaking order/non-speaking order

mjs P. DHANABAL, J., mjs To The Special Joint Commissioner of Labour, DMS Complex, Chennai. 10.07.2025

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