



WEB COPY



W.P. No.30589 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2025

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.30589 of 2022
and W.M.P. Nos.30020 and 30022 of 2022

Tamil Nadu State Transport Corporation,
(Villupuam) Ltd.,
Villupuram - 605 602. .. Petitioner

vs.

1. M.A. Mohamed Nazar
Tradesman, Staff No.TR1819

2. The Special Deputy Commissioner of Labour,
Chennai-06. .. 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 relating to the order of the Special Deputy Commissioner of Labour, Chennai dated 26.10.2015 passed in A.P. No.205 of 2013 and quash the same.

For Petitioner : Mr. M. Aswin

For Respondent : Mr. S.T. Varadarajulu [for R1]
Mr. L.S.M. Hasan Faizal,
Additional Government Pleader.

ORDER

This Writ petition has been filed to quash the order passed by the

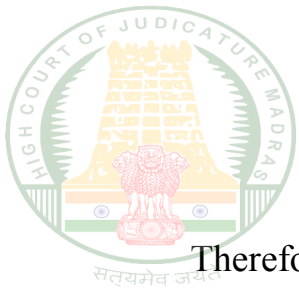


W.P. No.30589 of 2013

Special Deputy Commissioner of Labour, Chennai in A.P. No.205 of 2013
dated 26.10.2015.

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

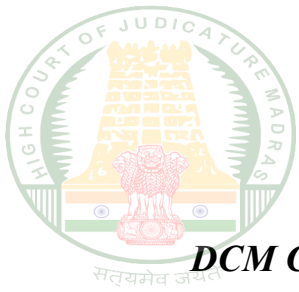
The 1st respondent was working as a technical staff under the petitioner Corporation. While so, he was unauthorizedly absent for more than 8 days from 21.07.2007. For the said misconduct, a Charge Memo was issued to him on 04.09.2007 and no any explanation was offered by him. Thereafter, a domestic enquiry was ordered and the 1st respondent had evaded from service of Show Cause Notice issued by the petitioner Corporation in respect of the domestic enquiry. Thereby, the Enquiry Officer proceeded the domestic enquiry exparte. Thereafter, the Enquiry Officer rendered his findings that the charges levelled against the 1st respondent were proved. The Disciplinary Authority issued a second Show Cause Notice dated 05.06.2018 to the 1st respondent and he did not offer any explanation. Therefore, a punishment of removal from service was inflicted and the 1st respondent was removed from service through an order dated 12.09.2008. Thereafter, the petitioner Corporation filed an approval petition before the 2nd respondent under Section 33(2)(b) of the Industrial Disputes Act and the same was dismissed.



W.P. No.30589 of 2022

Therefore, now the petitioner Corporation challenged the said dismissal order passed by the Approval Authority through this Writ petition.

3. The learned counsel appearing for the petitioner would submit that the 1st respondent was unauthorizedly absent for more than 8 days from 21.07.2007 onwards and the same is a misconduct under Rule 26(2) of the Standing Order of the petitioner Corporation. Therefore, the petitioner issued a Charge Memo on the 1st respondent and no explanation was offered by him. In the enquiry proceedings also, the 1st respondent did not participate and he evaded from service of notice. Thereafter, the Enquiry Officer conducted a domestic enquiry and submitted his findings as 'charges levelled against the 1st respondent were proved'. The Disciplinary Authority accepted the said enquiry report and issued a 2nd Show Cause Notice on the 1st respondent. No explanation was submitted by the 1st respondent. Therefore, considering the misconduct committed by the 1st respondent, the Disciplinary Authority awarded a punishment of removal from service. Thereafter, the Disciplinary Authority filed a petition under Section 33(2)(b) of the Industrial Disputes Act for an approval of the order of the removal and the same was dismissed by the 2nd respondent without any valid reasons. The Approval Authority failed to consider the guidelines issued by the Hon'ble Supreme Court in ***Lalla Ram vs.***



W.P. No.30589 of 2022

DCM Chemical Works reported in AIR 1978 (SC) 1004. The 2nd respondent

without considering the exhibits P3 and P4 and the fact that in spite of effective steps taken by the petitioner Corporation to serve notice on the 1st respondent, he evaded from service of the notice, passed an erroneous order. Sufficient opportunity was given to the 1st respondent, but the 2nd respondent without perusing the records submitted by the petitioner Corporation along with the approval petition, has erroneously dismissed the petition. Therefore, the order passed by the 2nd respondent is liable to be set aside.

4. The learned counsel appearing for the 1st respondent would submit that the petitioner Corporation, without affording opportunity to the 1st respondent conducted an enquiry and awarded punishment. The principles of natural justice have not been followed and no prima facie evidence has been made out based on the acceptable evidence and no one month salary was paid to the 1st respondent and approval petition was filed belatedly. A cheque was issued after 5 years. The order of removal from service was dated 12.09.2008 and a cheque for one month salary was issued on 24.06.2013. Therefore, there was an inordinate delay in complying with the mandatory conditions under Section 33(2)(b) of the Industrial Disputes Act. Therefore, the 2nd respondent passed a reasoned order and hence, the present Writ petition is liable to be



W.P. No.30589 of 2022

dismissed.

WEB COPY

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

6. In this case, the service of notice itself, is in question. While so, it is the duty of the petitioner to prove that notice was served to the 1st respondent in the Disciplinary Proceedings. They produced Ex.P.3 and Ex.P.4, the enquiry notices sent through RPAD and copy of the charge memo was also sent through RPAD and no effective steps were taken to serve notice to the 1st respondent in other modes. In the Disciplinary proceedings also, no any reference as to when the notice was issued to the 1st respondent and when it was returned and what are the steps taken to serve notice through other modes. Further, there is no reference in the enquiry proceedings as about the dates of hearings. Therefore, there are no any records to show that sufficient opportunity was given to the 1st respondent in the Disciplinary Proceedings. Therefore, the principles of natural justice have not been followed in the domestic enquiry proceedings.

7. Moreover, it is an admitted fact that immediately after passing the

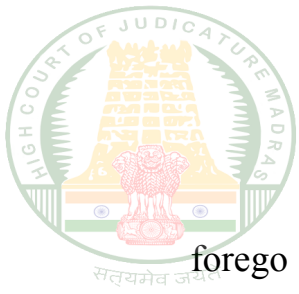


W.P. No.30589 of 2011

WEB COPY

dismissal order, no one month salary was paid to the 1st respondent. The date of dismissal order is on 12.09.2008 and the cheque for one month salary was paid on 24.06.2013, i.e., after 5 years and the Approval Petition was also filed by the petitioner Management after 5 years. Therefore, the Approval petition was not filed simultaneously with the dismissal order and the guidelines issued by the Hon'ble Supreme Court in ***Lalla Ram vs. DCM Chemical Works reported in AIR 1978 (SC) 1004*** have not been followed by the Management. Therefore, the Approval Authority has rightly rejected the Approval petition filed by the Management and this Writ petition is liable to be dismissed.

8. During the arguments, the learned counsel appearing for the 1st respondent filed an affidavit stating that the 1st respondent already attained superannuation and he is struggling for his livelihood and therefore, pension may be granted to him from the date of his retirement and he agreed to forego the entire backwages for the non-employment period i.e., from 12.09.2008 to 31.05.2005, if continuity of service with settlement benefits is given for the non employment period and PF contribution payable to the pension trust for the non employment period should be paid by the petitioner Corporation. Though the 1st respondent is entitled to all the benefits, he himself agreed to



W.P. No.30589 of 2022

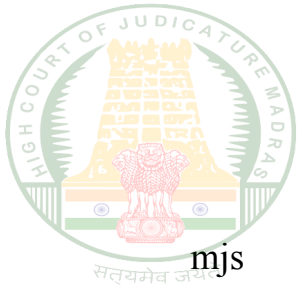
forego the entire backwages for the non-employment period from 12.09.2008 to 31.05.2005. Therefore, the 1st respondent is not entitled to any backwages for the non-employment period and he is entitled to the pension related to continuity of service with settlement benefits and PF contribution payable to the Pension Trust for the non-employment period and the same should be paid by the petitioner Corporation.

9. Therefore, it is appropriate to direct the petitioner Corporation to grant pension by taking non-employment period from 12.09.2008 to 31.05.2005 as continuity of service with settlement benefits and PF contribution payable to the Pension Trust should be paid by the petitioner Corporation.

10. With the above said directions, the present Writ petition is disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

24.06.2025

Index : Yes/No
Speaking order/non-speaking order



mjs

WEB COPY

To

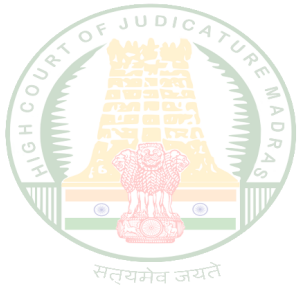
The Special Deputy Commissioner of Labour,
Chennai-06.



W.P. No.30589 of 2022

P. DHANABAL, J.,

mjs



WEB COPY



W.P. No.30589 of 2022

W.P. No.30589 of 2022

24.06.2025