



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.36815 of 2005  
and  
W.P.M.P.No. 39430 of 2005  
& W.V.M.P 376 of 2006

Tamilnadu State Transport Corporation,  
(Villupuram) Ltd,  
Villupuram.  
Rep by its Managing Director.

... Petitioner

..Vs..

1.The Joint Commissioner of Labour,  
(Conciliation), D.M.S.Compound,  
Teynampet,  
Chennai - 600 006.

2.S.Sebastian

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the 1<sup>st</sup> respondent in Approval Petition No.388 of 2003 dated 19.12.2004 and to quash the same.

For Petitioner : Mr.Kala Ramesh

For Respondents : Mr.L.S.M. Hasan Fizal  
Govt,. Advocate for R1

Mr.T.Dhanyakumar for R2



## O R D E R

The Petitioner / Management has come forward with the present writ petition challenging the order of the A.P.No.388 of 2003 dated 19.12.2004, passed by the first respondent, by which, the Authority refused to approve the removal order of the Management.

2. In the order, the Authority has held that the enquiry has not been conducted in accordance with the principles of natural justice, as the Enquiry Officer had not asked the Opposite Party, there is any witness on his side. This has got to be construed as an omission on the part of the enquiry. When there is a defect in the enquiry, definitely it is the duty cast upon the Authority to afford an opportunity to let in evidence to establish the charges, provided there is a plea to that effect.

3. In this case, the Authority came to the conclusion that there is no legal evidence to establish the charges. Once the domestic enquiry is vitiated, in the light of the judgments rendered by the Apex Court in John D'Souza vs. Karnataka State Road Transport Corporation, reported in (2019) 18 SCC 47 and this Court in Management, Tamil Nadu State Corporation (Villupuram) Limited, Kancheepuram Region, Kancheepuram v. M.Chitti Babu (deceased) and others, reported in 2021-I-LLJ-17, the matter will have to be remanded and that an opportunity has got to be afforded in order to establish the case.

4. Learned counsel appearing for the Management submitted that even if there is a short fall, it can be made subsequently and unless until an employee actually worked on permanent wages, all allowances cannot be taken into account for the purpose of deciding the wages. This Court is not inclined to accept the said submission, as it has been clearly defined in Sections 33(2)(b) and 2(rr) of the I.D.Act, 1947 as to the derivation of meaning of words "wages" and "allowances" which are extracted hereunder:-

### Section 33(2)b OF INDUSTRIAL DISPUTES

(b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for



one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

#### Section 2(rr) Industrial Disputes Act

[(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes--

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food-grains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both;]

but does not include-- (a) any bonus; (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force; (c) any gratuity payable on the termination of his service;]

5. In terms of the definition "wages", the employee is entitled to wages, which includes such allowance that is mentioned in the definition and that there are certain allowances that are not included under wages. The word "of work done in such employment" shall include allowances drawn during the last month. As the employee is not going to work in the subsequent month because of the dismissal order, all the allowances that were drawn by the employee during the preceding month in terms of Section 2 (rr) has got to be extended.

6. Learned counsel for the Management relied upon a judgment of the Supreme Court in the case of Bharath Electronics Limited Vs Industrial Tribunal, Karnataka, Bangalore and another reported in AIR 1990 1080 and the said judgment may not be applicable to the facts of the case, as the Apex Court in the said case rightly held that night shift allowance automatically did not form part of the wages, as it is variable, depending upon the nature nature of work and therefore, it was held that the employee therein cannot include the night shift allowance.



7. In the present case on hand, all the allowances, which were paid to the employee were drawn in the previous month and as a part of the wages under Section 2(rr) of the I.D.Act, 1947 and therefore, the benefits have got to be extended, as the decision of the Apex Court is distinguishable, in the light of the judgment of the Apex Court in Padmasundara Rao Vs State of Tamil Nadu and others, reported in 2002 (3) SCC 533. Moreover, in this case, neither night shift allowance has been included nor other special allowance is sought to be included in wages by the employee.

8. On the other grounds, namely, there is short fall of one month wages and that the mandatory provisions have not been complied with, the Authority was right in rejecting the Approval Petition.

9. Taking note of the short fall in payment of one month wages the order of the Approval Authority warrants no interference by this Court and the writ petition is liable to be dismissed.

10. In the result, this Writ Petition is dismissed. No costs. Connected miscellaneous petitions are also closed.

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Assistant Registrar (CS-CCC)

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Sub Assistant Registrar

dpq

To:

The Joint Commissioner of Labour,  
(Conciliation), D.M.S.Compound,  
Teynampet,  
Chennai - 600 006.

+1CC to M/s.T.Dhanya Kumar, Advocate, SR.No. 37083

+1CC to Mr.Kala Ramesh, Advocate, SR.No. 37136

W.P.No.36815 of 2005

 $CA(CO)$ 

B.VC (22/10/2021)