

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.3231 of 2007

D.Babu

... Petitioner

Vs.

The General Manager,  
(Administration)  
Metropolitan Transport Corporation  
(Chennai) Limited,  
Annasalai, Chennai - 2.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorari to call for the records relating to the order in Se.Mu.Aa.No.9053/SaPi(ONa)13/MTC/01, dated 23.01.2007 passed by the respondent and quash the same.

For Petitioner :Mr.R.Krishnasamy  
for Mr.V.Ajay Khose

For Respondent :Mr.D.Gopinathan  
for Mr.M.Ravi Bharathi

ORDER

Challenging the order passed by the respondent/the General Manager (Administration), Metropolitan Transport Corporation (Chennai) Limited, Chennai, vide his proceedings dated 23.01.2007, terminating the petitioner from service, the present writ petition has been filed by the petitioner on the ground that the respondent has no jurisdiction to pass the order of termination.

2. Assailing the above said impugned order, learned counsel appearing for the petitioner straight away brought to the notice of this Court the order passed by the Hon'ble Apex in the case of Tamil Nadu State Transport Corporation v. Neethivilangan, Kumbakonam ((2001) 9 SCC 99), wherein the Hon'ble Apex Court, while considering the application seeking approval for dismissal order, held that, by passing the order of discharge or dismissal, de facto the

relationship of employer and employee may be ended, but not the de jure relationship for that could happen only when the Tribunal accords its approval. In other words, the relationship of employer and employee is not legally terminated till approval of discharge or dismissal is given by the Tribunal.

3. By citing the above said ratio, learned counsel for the petitioner contended that, in the present case, the Joint Commissioner of Labour (Conciliation), Chennai, refused to accord approval to the action taken by the employer and rejected the petition filed under Section 33(2)(b) of the Industrial Disputes Act (in short "Act") on merits, by citing three reasons; (a) that the petitioner was not paid with statutory subsistence allowance, when he was kept under suspension pending enquiry; (b) that he was not paid with one month wages at the time of dismissal and (c) that he was dismissed from service repeatedly and repeatedly cancelled the dismissal order, when the defects in the procedure adopted by it was pointed out, therefore, the action of respondent is a clear violation of the mandatory conditions of Section 33(2)(b) of the Act, as held by the Hon'ble Apex Court in Jaiput Zilla Sahakari Bhoomi Vikas Bank v. Ramgopal Sharma (2002-1-LLN-639).

4. But, this Court finds it difficult to accept the above said submissions, for the reason that though the Joint Commissioner of Labour (Conciliation), Chennai, found the defects committed by the respondent, it is not known why the same care and seriousness were not shown to the conduct of the petitioner as well, since the petitioner, by producing bogus certificates (10<sup>th</sup> standard mark sheet, Transfer Certificate and I.R.T. Certificate), got appointment in the Metropolitan Transport Corporation. It came to light, when the same was verified by the School Authorities, Special Officer and the Institute of Road Transport. Only based on the report submitted by the above said officials, the petitioner was placed under suspension and thereby, a charge memo dated 26.04.2001 was also issued and thereafter, the matter was referred to enquiry, where he was found guilty of all the charges levelled against him.

5. Further, when the matter was taken up by the Joint Commissioner of Labour (Conciliation), Chennai, he has also observed that a prima facie case is made out against the petitioner for dismissal from service. The Joint Commissioner of Labour (Conciliation), Chennai, after considering the oral and documentary evidence let in before him, has come to the conclusion that the findings of the Enquiry Officer contained in Ex.A16 was based on the evidence let in before him. Therefore, by holding so, the Joint Commissioner of Labour ought not to have refused to accord his approval on the ground that there was a violation of conditions mentioned in Section 33(2)(b) of the Act. Thus, this Court, finding such flaw committed by the Joint Commissioner, is not inclined to

quash the impugned order passed by the respondent terminating the petitioner from service. Accordingly, the writ petition fails and the same is dismissed. No Costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

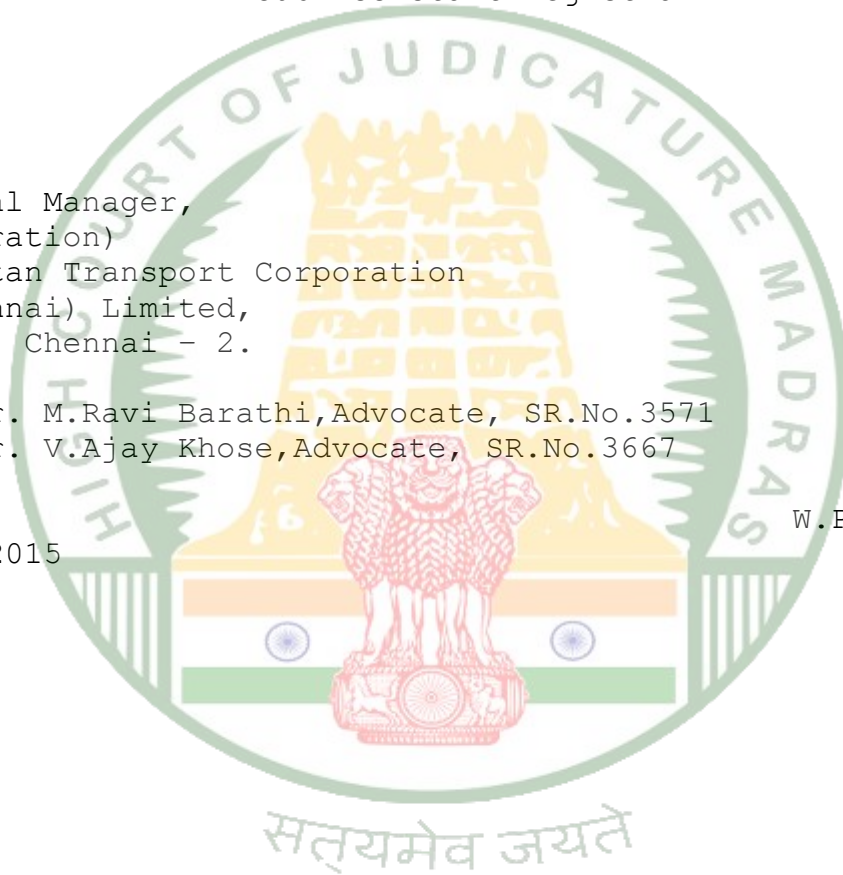
The General Manager,  
(Administration)  
Metropolitan Transport Corporation  
(Chennai) Limited,  
Annasalai, Chennai - 2.

1 cc to Mr. M.Ravi Barathi, Advocate, SR.No.3571

1 cc to Mr. V.Ajay Khose, Advocate, SR.No.3667

pmk.26.2.2015

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