IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

W.P. Nos.33497 to 33505 of 2015

The Management of Metropolitan Transport of Corporation,
(Chennai) Ltd.,
Rep., by its Sr.Deputy Manager (HRD)
Pallavan Illam, Anna Salai,
Chennai.- 600 002. ... Petitioner in all WPs

Vs

Thiru.A.Ramesh Babu
Tradesman - T08467,
No.S2, B-Block, Liberty Plaza,
Vada Agaram Salai, Metha Nagar,
Chennai - 600 029. ... R1 in WP.33497/15

K.Shanmugam ... R1 in WP.33498/15

G.Ramesh ... R1 in WP.33499/15

V.Mohana Sundaram ... R1 in WP.33500/15

S.Veeramani ... R1 in WP.33501/15

A.Venkatesan ... R1 in WP.33502/15

Purushothaman ... R1 in WP.33503/15

N.Tirupathi ... R1 in WP.33504/15

M.Muthu ... R1 in WP.33505/15

The Special Deputy Commissioner of Labour,
D.M.S., Office,
Teynampet, Chennai - 600 006. ... R2 in all WPs

Prayer : Petition presented under Article 226 of the Constitution of India, praying to issue Writs of Certiorari, calling for the records pertaining to the order passed in A.P.Nos.439/11, 435/11, 465/11, 241/12, 252/12, 185/11, 193/12, 20/12 and 115/12 respectively dated 24.07.2014, 17.12.2014, 11.08.2014, 15.07.2014, 05.08.2014, 12.12.2014, 10.07.2014, 11.08.2014 and 06.08.2014 respectively on the file of the second respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram in all W.Ps.,

For Respondents : Mr.R.Rajeswaran,
Special Government Pleader for R2

S.T.Varadharajulu for R1 in
WP.33500 & 33505/15

C O M M O N O R D E R

As the legal issue involved in all these Writ Petitions are identical, they were heard together and are disposed of by this common order, with the consent of parties.

2. The petitioner in all these Writ Petitions is the Management of the Metropolitan Transport of Corporation (Chennai Ltd), (hereinafter referred to as the 'Management'). The first respondent in all the Writ Petitions were employed as Drivers, Conductors and Tradesman by the Management and shall be referred to as the Workmen. All the Workmen were guilty of unauthorised absence. The Management would contend that in terms of clause 25(vi) of their Certified Standing Orders, employees, who continued to be absent for eight consecutive days, could be terminated by the Management without notice. It is stated that on account of the unauthorised absence of the Workmen, the Management incurred additional expenditure by engaging substitute workmen, which not only resulted in loss of revenue, but also caused inconvenience to passengers in not being able to operate the buses on time. All the Workmen having unauthorisedly absented themselves were issued charge memos by the Management calling upon them to submit their explanation for their unauthorised absence. Majority of the Workmen though received the charge memos did not submit their explanation. The Management in order to afford an opportunity decided to conduct domestic enquiry for which purpose appointed an enquiry officer. The Workmen participated in the domestic enquiry and the enquiry officer submitted report holding that the charges were proved. The Management issued second show cause notices enclosing the

copy of the enquiry report and referring to the past conduct/punishments suffered by the Workmen and arrived at a provisional conclusions to terminate their services. Having not received any reply to the said notice, the respondent Workmen were terminated from service. As a common issue relating to the Workmen of the petitioner Management was pending conciliation before the Special Deputy Commissioner of Labour, Chennai. The Management sought for approval by filing petitions before the second respondent. According to the Management, the Workmen were paid one month wages while seeking approval of the order of termination. Before the second respondent, the Management marked the relevant documents and it appears that the Workmen did not produce any documents on their side. Ultimately, the Approval Petitions were rejected by the second respondent and challenging those orders, the present Writ Petitions have been filed.

3. The learned counsel appearing for the petitioner Management submitted that the second respondent failed to consider that the Workmen were habitual absentees having failed to submit their explanation, yet the Management in order to afford an opportunity to them, conducted domestic enquiry in a fair and proper manner and after following the due procedure, they were terminated from service. Further, the pre-condition required to be complied with by the Management in terms of Section 33(2)(b) of the Industrial Disputes Act, 1947, (I.D.Act) was scrupulously followed and while effecting payment of one month wages, the Management specifically stated in the communication that if there is any difference in the wage, the same will also be settled. However, the second respondent without considering the said stand, rejected the Approval Petition on hyper-technical grounds. Further, it is submitted that in most of the cases, the alleged difference in wages was on account of enhanced Dearness Allowance, which was implemented only for the regular employees and even assuming, there was a marginal difference, the second respondent ought to have examined the stand taken by the Management to pay the deficit if any in their communication addressed to the Workmen, while paying one month wage. Therefore, it is contended that the order passed by the second respondent rejecting the approval petition is not in consonance with law and calls for interference.

4. The learned counsel appearing for the Workmen after elaborately reiterating the factual averments submitted that the Management had imposed a “capital” punishment on the Workmen for short spells of absence, which the Workmen had explained during the domestic enquiry and the enquiry officer did not properly appreciate the facts placed by the Workmen. Further, it is

contended that the second respondent after taking into consideration the mandatory requirement to be complied with by the Management under Section 33(2)(b) of the I.D.Act, noted that the wages paid to the Workman were not one month wage, but there was a deficit and therefore, rightly held that it is non-compliance of the statutory requirement. Therefore, it is submitted that the impugned orders are perfectly legal and valid and the Workmen are deemed to continue in service and they are entitled for full wages and all benefits.

5. Heard the learned counsels appearing for the parties and perused the materials placed on record.

6. Section 33 of the I.D.Act deals with conditions of service, etc.; to remain unchanged under certain circumstances during pendency of proceedings. Sub-section (2) of Section 33 states that during the pendency of any such proceedings in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in the dispute or, where there are no such standing order, in accordance with the terms of the contract alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceedings or for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman. Proviso under Section 33(2) states that 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 proceedings is pending for approval of the action taken by the employer.

7. It is not in dispute that the proceedings which were pending before the second respondent, were common issues relating to the employees of the Management and in the cases on hand, the Workmen were terminated for misconduct and therefore, the Management was entitled to proceed further after complying with the requirement mentioned in the proviso to Section 33(2) of the I.D.Act.

8. It is not in dispute that all the Workmen were paid the wages while approval was sought for from the second respondent. The claim of the Workmen is that the wages paid to the Workmen is not the wages for one month. Therefore, they pleaded before the second respondent that the Management has not complied with the mandatory condition under Section 33(2) of the I.D.Act. The second respondent after considering the submissions on either side framed five issues for consideration, namely,

(i) whether the domestic enquiry conducted by the Management was fair and proper;
(ii) whether there was a prima facie case for conducting an enquiry and sufficient evidence to establish the charge;
(iii) whether the order of termination was tainted with malafide;
(iv) whether the workmen were paid one month wages and;
(v) whether the application filed before the second respondent was within the time.

9. In all the cases, the second respondent held that requirement under Section 33(c)(2) of the Act has not been complied with and in seven cases, the second respondent has also held that the domestic enquiry was not fair and proper.

10. Thus the issues which were decided against the Management is with regard to the one month wage which was paid to the Workmen and regarding the fairness of the domestic enquiry in 7 cases. By way of illustration, it would suffice to refer to the facts in W.P.No.33497 of 2015. In the said case, the Workman was paid a sum of Rs.14,456/- being one month wage and it is not disputed that the Workmen received the one month wage, after which the Management filed a petitions for approval in Form-T. In the said statutory form, the Management made a declaration that the one month wage had been paid to the workmen and that the said amount was paid by cheque and sent to the workmen by registered post and to prove receipt of the communication along with the cheque, the acknowledgement card was submitted before the second respondent. Further, the Management had stated in Form-T in case there is any change of emoluments leading to change in monthly wage and the workmen is entitled to an additional amount, the management is ready and willing to pay the deficit and undertook to abide by their declaration. Thus the second respondent had to adjudicate the correctness of the stand taken by the Management. More so, when he has held other issues in favour of the Management. In such scenario, the undertaking given by the Management assuring that they will pay the difference in wage which may arise on account of change of emoluments is a very relevant factor which the second respondent ought not to have brushed aside.

11. Admittedly, the difference in wage which the second respondent had pointed out in the said impugned order is approximately around Rs.2400/- and in the said impugned order, the second respondent had stated that this amount becomes payable on account of the variation in the Dearness Allowance at 58%. The question would be as to whether the approval sought for could have been rejected on the said ground. The law on the subject is no longer res integra and the application of the

Management for approval has to be tested on the conduct of the Management. The calculation which was done by the Management when the wages was computed, appears to have been based on the last drawn wages. However, the second respondent while considering as to whether there has been compliance of Section 33(2)(b) of the I.D.Act was inclined to pass the impugned order by taking into consideration the revised Dearness Allowance.

12. As noticed above, the Management undertook to pay any difference that may arise. Therefore, if there was any calculation mistake or any other error, the Management ought to have been granted an opportunity to make good the deficit. What is important to be seen is as to whether the mandatory requirement under Section 33(2)(b) of the I.D.Act was complied with before seeking for approval of the order of termination.

13. In my view, this has been done by the Management and the second respondent while considering the issue as regards compliance of section 33(2)(b) of the I.D.Act, failed to take note of the stand taken by the Management that they are willing to make good the deficit, if any. To decide as to whether there was any deficit the aspect as to whether revised dearness allowance was applicable to the Workmen had to be decided. However, such exercise was not done by the second respondent. Thus, this Court has no hesitation to hold that the Management had complied with the provision of Section 33(2)(b) of the I.D.Act. Therefore, to that extent, the impugned order calls for interference.

14. Having held so, it would be necessary to examine each of the cases on hand. In W.P.Nos.33497 & 33498 of 2015, the only issue, which was held against the Management was regards the one month wages payable under Section 33(2)(b) of the I.D.Act. The findings rendered by this Court in the preceding paragraph holding that the Management had complied with the statutory requirement would cover these two cases and therefore, the impugned order calls for interference.

15. In the other seven cases, namely, W.P.No.33499 to 33505 of 2015 apart from the issue relating to the compliance of Section 33(a)(b) of the I.D.Act, the second respondent held that the domestic enquiry was not fair and proper. On a perusal of the findings rendered by the second respondent, it is seen that in the domestic enquiry, the workmen were not afforded reasonable opportunity. The second respondent being a fact finding authority has appreciated the documents placed before it and rendered a finding and this Court is not inclined to re-appreciate the same and come to a different conclusion, as there is no perversity in the findings recorded by the second

respondent. Therefore, to that extent, the impugned orders in these cases required to be confirmed, though the findings regarding the compliance of Section 33(2)(b) of the I.D.Act, is held in favour of the Management.

16. After carefully considering the entire facts and circumstances of the case, it is seen that all the workmen have been terminated from service on the ground of unauthorised absence. In seven cases, the second respondent held the domestic enquiry conducted by the Management was not fair and proper and this Court has upheld the findings.

17. So far as the compliance of Section 33(2)(b) of the I.D.Act, is concerned, this Court has set aside the order passed by the second respondent. In such circumstances, it has to be seen as to what is the relief the Workmen would be entitled to. The charge against the each of the Workmen has been perused and from which it is seen that the charges are not grave. Therefore, this Court is of the firm view that the punishment of termination imposed on the Workman is grossly disproportionate to the charge against the Workmen. That apart this Court has upheld the stand taken by the second respondent that the domestic enquiry conducted against seven of the workmen is not fair and proper. Therefore, these are cases where the punishment imposed on the workmen requires to be reconsidered.

18. In the result,

(i) W.P.Nos.33497 and 33498 of 2015, are allowed. However, it is held that the punishment of termination from service is grossly disproportionate to the charge against the Workmen and therefore, such order of punishment imposed on the Workmen is set aside and the matter is remanded to the petitioner Management for imposing any other minor punishment on the Workmen.

(ii) W.P.Nos.33499 to 33505 of 2015 are partly allowed and the order passed by the second respondent with regard to the question relating to Section 33(2)(b) of the I.D.Act alone is set aside and the order holding that the domestic enquiry conducted against the Workmen was not fair and proper is upheld. Consequently, the punishment of termination from service is set aside and the matter is remanded to the petitioner Management to impose some other minor punishment on the respondent Workmen.

(iii) The above direction shall be complied with by the petitioner Management within a period of eight weeks from the date of receipt of a copy of this order.

(iv) No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pbn

To

The Special Deputy Commissioner of Labour,
D.M.S., Office,
Teynampet, Chennai - 600 006.

+1cc to Mr.S.T.Varadharajulu, Advocate, S.R.No.7467

W.P. Nos.33497 to 33505 of 2015

KSJ(CO)
CA(25/02/2016)