

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.06.2017

Coram

The Hon'ble Mr.Justice M.M.SUNDRESH

W.P.Nos.333, 334 & 335 of 2014

The Management of
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai - 600 002.
Rep. by its General Manager.Petitioner in all W.Ps.

Vs.

1. The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.1st Respondent in all W.Ps.,

2. Tmt.Niranjana
W/o. Late Girirajan,
No.42/2, 5th Street,
Kambar Nagar,
Chennai -82.2nd Respondent in W.P.No.333/2014
R2 was substituted as per order of this Court dated 22.01.2015
in M.P.No.2 of 2014 in W.P.No.333 of 2014.

2.M.Balasubramani2nd Respondent in W.P.No.334/2014

2.N.Shanmugam2nd Respondent in W.P.No.335/2014

Prayer in W.P.No.333 of 2014:- Writ Petition filed under
Article 226 of the Constitution of India, to issue a Writ of
Certiorari, to call for the records of the order passed by the
first respondent in Approval Petition in A.P.No.579 of 2011
dated 10.05.2013 and to quash the same as illegal.

Prayer in W.P.No.334 of 2014:- Writ Petition filed under
Article 226 of the Constitution of India, to issue a Writ of
Certiorari, to call for the records of the order passed by the
first respondent in Approval Petition in A.P.No.402 of 2011,
dated 22.07.2013 and to quash the same as illegal.

Prayer in W.P.No.335 of 2014:- Writ Petition filed under
Article 226 of the Constitution of India, to issue a Writ of
Certiorari, to call for the records of the order passed by the

first respondent in Approval Petition in A.P.No.397 of 2011, dated 22.07.2013 and to quash the same as illegal.

For Petitioner : Mr.P.Paramasiva Doss

For Respondent 1 : Mr.S.Diwakar
Special Government Pleader for R1

For Respondent 2 : Mr.S.T.Varadarajulu for R2
in W.P.Nos.334 & 335 of 2014

Mr.J.Muthukumaran for R2
in W.P.No.333 of 2014

C O M M O N O R D E R

With the consent of the learned counsel appearing on either side, the Writ Petitions themselves are taken up for final disposal.

2. All these Writ Petitions are against the order passed under Section 33(2)(b) of the Industrial Disputes Act, (I.D.Act), by which the approval sought for has not been granted. The approval has been sought for the orders of dismissal by framing charges that the workmen concerned have taken unauthorised absence. The first respondent has rejected the request on the premise that principles of natural justice has not been followed, though no mala fide is involved. Incidentally, it was held that the applications having been filed immediately after one month, it is nothing but continuation of the orders of dismissal passed.

3. As rightly submitted by the learned counsel for the parties, considering the similar charges, this Court has already set aside the orders passed by the appeal petition as well as the punishment imposed on the ground of proportionality. Accordingly, all the matters have been remitted back for consideration for considering minor punishment.

4. In the case on hand, this Court is of the view that on a perusal of the order impugned, it requires remittance. Ultimately, the question has to be considered afresh. The charges have been framed for the alleged misconduct that has taken place more than seven years ago. Therefore, no useful purpose would be served for remitting the matter for fresh consideration. Incidentally, this Court finds that a mere ex parte enquiry by itself cannot be a ground to say that no fairness is involved, in the absence of it having been held

without due notice. Similarly, the reason assigned in filing the application after a month would at best be an inference not supported by law.

5. Considering the facts of the case, this Court is of the view that an order can be passed balancing the interest of both sides. While on the one hand, the petitioner shall not be made liable for the unauthorised absence of the respondents, and the respondent also shall not be made to suffer for the nature of punishment imposed already. The remittal order made in similar cases, as submitted by the learned counsel for the parties, has become final and therefore at best, the petitioner can only impose a lesser punishment. Hence, considering the above, this Court is of the view that the petitioner shall reinstate the respondents workmen, within a period of eight weeks from the date of receipt of a copy of this order. However, they will not be entitled for any backwages till the date of reinstatement as it is not a matter of right coupled with the fact that they also have a role leading to the proceedings initiated against them. However, they are entitled for continuity of service and other incidental benefits. The petitioner shall also pay the contribution towards Provident Fund in favour of the Trust, since the respondents workmen were unemployed over the years. This is till the period of reinstatement.

6. Insofar as W.P.No.333 of 2014, is concerned, the original respondent workman died. Therefore, the resultant benefits will have to be given from the date of the death of the respondent workman in favour of the impleaded respondent, who is the wife of the deceased, within a period of eight weeks from the date of receipt of a copy of this order. In all other respects, the direction issued by this Court referred above would be applicable to W.P.No.333 of 2014. However, the continuity of service would end from the date of the death of the respondent workman.

7. Insofar as W.P.No.335 of 2014 is concerned, the petitioner has reached the age of superannuation on 05.03.2014, and therefore, he is not entitled for any backwages beyond that period and thus, the direction made above will be applicable to him otherwise. For him also the requisite payment will have to be made including pensionary benefits within a period of eight weeks from the date of receipt of a copy of this order.

8. The impleaded respondent, who is the wife of the respondent workman in W.P.No.333 of 2014, also seeks a compassionate appointment. She has also made a representation in this regard. This representation will have to be considered as per law by the petitioner, within a period of eight weeks from the date of receipt of a copy of this order.

In the light of the directions issued, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pbn

To

1. The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.

+2ccs to Mr.S.T.Varadarajalu, Advocate Sr. 41220
+3ccs to Mr.R.Paramasivadoss, Advocate Sr. 41774 to 41776
+1cc to the Government Pleader, Sr. 41585
+1cc to Mr.J.Muthukumaran, Advocate Sr. 41101

W.P.Nos.333, 334 & 335 of 2014

AR(V)
VR(06/07/2017)

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