

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.Nos.31039 to 31048 of 2015

and

M.P.No.1 of 2015 (10 Nos.)

and

W.M.P.Nos.27056 & 27057 of 2016

W.P.No.31039 of 2015

The Managing Director,
Metropolitan Transport Corporation,
(Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai 600 002.

...Petitioner in all WP's

Vs.

- 1.K.Chidambaram ...1st Respondent in W.P.31039 of 2015
- P.Govindan ...1st Respondent in W.P.31040 of 2015
- D.Anandan ...-do- in W.P.31041 of 2015
- Thiru G.Kumar .../do in W.P.31042 of 2015
- P.Karuppiah .../do in W.P.31043 of 2015
- P.Govindaraj .../do in W.P.31044 of 2015
- M.Selvaraj .../do in W.P.31045 of 2015
- S.Devanesam .../do in W.P.31046 of 2015
- S.Bharathi .../do in W.P.31047 of 2015
- N.David Suresh .../do in W.P.31048 of 2015

2. The Special Deputy Commissioner of Labour,
DMS Office,
Teynampet,
Chennai 600 006.

...2nd Respondent in all WP's

Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the order passed in A.P.No.520 of 2012 dated 25.07.2014 in W.P.No.31039

- AP 118/12 dated 05.08.2014 (in W.P.31040/15)
- AP 135/13 dated 05.08.2014 (in W.P.31041/15)
- AP 95/10 dated 09.01.2015 (in W.P.31042/15)
- AP 546/11 dated 12.01.2015 (in W.P.31043/15)

AP 191/12 dated 20.06.14 (in W.P.31044/15)
AP 433/11 dated 18.11.14 (in W.P.31045/15)
AP 508/12 dated 28.12.14 (in W.P.31046/15)
AP 251/12 dated 05.08.14 (in W.P.31047/15)
AP 314/12 dated 05.08.14 (in W.P.31048/15) respectively of 2015
on the files of the 2nd Respondent herein and quash the same.

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

For Respondents : Mr.R.Krishnaswmy
for R1 in W.P. No.31046 of 2015
Mr.S.Diwakar,
Spl. Govt. Pleader for R2
in all the W.Ps

No appearance for R1 in
W.P. Nos.31039 to 31045,
31047 & 31048 of 2015

COMMON ORDER

By consent, the writ petitions are taken up for final disposal.

2.These writ petitions have been filed challenging the order passed rejecting the approval petitions.

3.Learned counsel appearing for the petitioner would submit that the order passed by this Court in W.P.Nos.31812 to 31823 of 2015 dated 15.02.2016 would govern these writ petitions also being identical and similar. However, learned counsel appearing for the first respondent(s)/workmen would submit that even the said order has not been complied with.

4.Learned counsel appearing for the petitioner would submit that the abovesaid order could not be complied with since the respective respondents/workmen in those writ petitions are not appearing before the petitioner for the purpose of complying with the same.

5.Learned counsel appearing for the first respondent(s)/workmen in these writ petitions would submit that they would appear and do the needful. The said statement is recorded. In the aforesaid order dated 15.02.2016, this Court was pleased to hold as follows:

4. The issue involved in these Writ Petitions is no longer res integra, as this Court, in a batch of Writ Petitions, viz., in W.P.Nos.33497 to 33505 of 2015, filed by the very same Management, involving similar set of facts, had set aside the

order passed by the Special Deputy Commissioner of Labour, Chennai, who is the second respondent herein. Totally, nine Writ Petitions were filed, and this Court, as per the issues under challenge, segregated those Writ Petitions in two sets. In one of Writ Petitions, viz., W.P.Nos.33497 & 33498 of 2015, the issue which was taken up for consideration is :-

Issue No.I)

Whether the Management has complied with the provisions of Section 33 2 (b) of I.D. Act before imposing the punishment of termination of service on the workmen ?

5. In other set of Writ Petitions, viz., in W.P.No.33499 to 33505 of 2015, apart from issue No.I, mentioned supra, another issue was taken up for adjudication, which is mentioned infra:-

Issue No.II)

Whether the findings rendered by the Special Deputy Commissioner of Labour that the domestic enquiry conducted by the Management was not fair and proper, is correct or incorrect?

6. This Court, analysed the facts of the each case, and held Issue No.I) (which is common in all Writ Petitions) in favour of the Management, by holding that the Management has complied with the mandatory condition under Section 33 (2) of I.D.Act, and allowed W.P.Nos.33497 & 33498 of 2015. Insofar as the other set of Writ Petitions is concerned, viz., W.P.No.33499 to 33505 of 2015, concerning issue No.II), this Court was not inclined to interfere with the findings recorded by the Special Deputy Commissioner of Labour, as there was no perversity or illegality in those findings, and upheld issue No.II against the Management and held that the domestic enquiry conducted by the Management was not fair and proper, and partly allowed W.P.Nos.33499 to 33505 of 2015. However, this Court taking into consideration the plight of the workmen, took upon itself, another issue for consideration, which is mentioned infra:-

Issue No.III

" To what relief, the workmen would be entitled to?"

7. This Court, after thoroughly perusing the charge levelled against the each of the Workmen, opined that the punishment of termination imposed on

the Workman is grossly disproportionate to the charge against them. Thus, this Court, after deciding Issue No.I in favour of the Management and Issue No.II) against it, decided last and final Issue No.III in favour of workmen. Ultimately, this Court, while wholly allowing W.P.Nos.33497 & 33498 of 2015, and partly allowing W.P.No.33499 to 33505 of 2015, and having decided Issue No.III in favour of the workmen, set aside the punishment imposed on the Workmen and remanded the matter to the petitioner-Management for imposing any other minor punishment on the Workmen, and directed the petitioner-Management to complete the said exercise within a period of eight weeks from the date of receipt of a copy of that order. For better appreciation, the operative portion of the said order, dated 15.02.2016, is extracted hereunder:-

"(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."

8. Thus, in the light of the order passed by this Court in W.P. Nos.33497 to 33505 of 2015,

dated 05.07.2013, (referred supra), the present Writ Petitions can also be disposed of, on the same lines, as they are filed by the very same Management concerning its employees in respect of the identical charge, i.e., "unauthorized absence", and the impugned orders are passed by the same Commissioner of Labour, Chennai, who framed the five issues, which were also identical in the said batch of Writ Petitions, and ultimately, rejected the Approval Petitions filed by the Management.

9. Accordingly, the writ petitions are partly allowed, the 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. The said exercise shall be completed by the petitioner Management within a period of eight weeks from the date of receipt of a copy of this order.

10. In the result, the Writ Petitions are partly allowed with the above direction. No costs. Consequently, connected M.Ps. as also W.M.Ps. are closed.

6.As the facts and circumstances of the case are similar including the nature of charges, the ratio laid down therein would be applicable to the cases on hand. Accordingly, the orders passed in the approval petitions are hereby set aside and so the orders of dismissal passed by the petitioner. Consequently, all the matters are remitted back to the petitioner to consider the minor punishment as in the case of writ petitions referred to above. The entire exercise will have to be done within a period of eight weeks from the date of receipt of a copy of this order, after putting the respective respondents on notice. Needless to state that the first respondent(s)/workmen will have to co-operate with the petitioner. Even otherwise, it is well open to the petitioner to pass appropriate orders in compliance with the order passed by this Court since the remittal is only for the purpose of considering the minor punishment.

7.Learned counsel appearing for the first respondent(s)/workmen also would submit that taking note of the continued non-employment, the provident fund may be paid by the petitioner to the trust during the period in which they were out of employment.

8.Considering the facts and circumstances of the case and taking note of the long non-employment of the first respondent

(s)/ workmen, the petitioner is directed to pay the requisite provident fund which is otherwise payable by the workmen concerned, till the date of reinstatement.

9.With the above observation and direction, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To
The Special Deputy Commissioner Of Labour,
DMS Office,
Teynampet, Chennai-06.

+1cc to Mr.V.Ajay Khose, Advocate Sr. 41106
+1cc to mr.M.Chidambaram, Advocate Sr. 41055

W.P.Nos.31039 to 31048 of 2015

RSY(CO)
VR(23/06/2017)



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