

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.Nos.3921 to 3929 of 2016

and

W.M.P.Nos.3266 to 3274 of 2016

- 1 The Management
Metropolitan Transport Corporation (Chennai)
Ltd Pallavan Illam Anna Salai
Chennai-600 002 ...Petitioner on All the Petitions
- Vs
- 1 Thiru. J.Arumainathan
Sanitary Worker Token No.A12284 No.2/42
Rajaji Street Membur Poonamallee
Chennai-600 056 ...Respondent in WP.3921 of 2016 &
WMP.3266 of 2016
- 1 Thiru. B.Dillip Kumar
No.137 G.N.T. Road Puzhal
Chennai-600 066 ...Respondent in WP.3922 of 2016 &
WMP.3267 of 2016
- 1 Thiru. I.Balaji Singh
Tradesman-Token No.A24421 No.155 Canal
Bunk Road Kasthuribai Nagar Adayar
Chennai-600 020 ...Respondent in WP.3923 of 2016 &
WMP.3268 of 2016
- 1 Thiru.N.Balakrishnan
No.39A P.V.Kovil 1st Street Pudhupettai
Royapettai Chennai-600 004
...Respondent in WP.3924 of 2016 &
WMP.3269 of 2016
- 1 Thiru.S.Ramesh
NO.13 Janakiraman Nagar Second Main Road
Sembiam Chennai-600 011

...Respondent in WP.3925 of 2016 &
WMP.3270 of 2016

- 1 Thiru. P.Haridoss
Conductor-Token No.C15751 Mathur Village &
Post Indira Nagar Sriperumbudhur Taluk
Kancheepuram District-602105.
...Respondent in WP.3926 of 2016 &
WMP.3271 of 2016
- 1 Thiru. R.Nedumaran
Ex-Driver No.D15462 No.16 Periyar Nagar
Chennai-81.
...Respondent in WP.3927 of 2016 &
WMP.3272 of 2016
- 1 Thiru. R.Venu
Driver - Token D12338 S/o.Raman Nair
A2/296 35th Street 6th Main Road Muthamil
Nagar Kodungaiyur Chennai-600 118
...Respondent in WP.3928 of 2016 &
WMP.3273 of 2016
- 1 Thiru. V.Anandan (Deceased)
Driver Staff No.D14496 Tmt.A.Mala W/o.V.
Anandan No.3/5 Chathiram Street Koyambedu
Chennai-600 107 ...Respondent in WP.3929 of 2016 &
WMP.3274 of 2016
- 2 The Special Deputy
Commissioner of Labour D.M.S. Office
Teynampet Chennai-600 006
...2nd Respondent in all the Petitioners

Writ petitions under Article 226 of the Constitution of India praying that in these circumstances stated therein and in the respective affidavits filed therewith the High Court will be relased to

(A) i.issue a Writ of certiorari or any other appropriate Writ, order or direction of like nature calling for the records pertaining to the order passed in A.P.No.452 of 2011 dated 09.01.2015 on the files of the 2nd respondent herein and quash the same (in WP.No.3921 of 2016);

ii.calling for the records pertaining to the order passed in A.P.No.349 of 2013 dated 10.08.2015 on the files of the 2nd respondent herein and quash the same (in WP.No.3922 of 2016);

iii.calling for the records pertaining to the order passed in A.P.No.434 of 2011 dated 20.04.2015 on the files of the 2nd respondent herein and quash the same (in WP.No.3923 of 2016);

iv.calling for the records pertaining to the order passed in A.P.No.50 of 2012 dated 22.04.2015 on the files of the 2nd respondent herein and quash the same (in WP.No.3924 of 2016);

v.calling for the records pertaining to the order passed in A.P.No.240 of 2012 dated 12.05.2015 on the files of the 2nd respondent herein and quash the same (in WP.No.3925 of 2016);

vi.calling for the records pertaining to the order passed in A.P.No.395 of 2011 dated 25.07.2015 on the files of the 2nd respondent herein and quash the same (in WP.No.3926 of 2016);

vii.calling for the records pertaining to the order passed in A.P.No.517 of 2012 dated 18.09.2013 on the files of the 2nd respondent herein and quash the same (in WP.No.3927 of 2016);

viii.calling for the records pertaining to the order passed in A.P.No.49 of 2012 dated 14.01.2015 on the files of the 2nd respondent herein and quash the same (in WP.No.3928 of 2016);

ix.calling for the records pertaining to the order passed in A.P.No.559 of 2011 dated 30.04.2015 on the files of the 2nd respondent herein and quash the same (in WP.No.3929 of 2016);

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

For Respondents : Mr.S.T.Varadarajulu for R1
in all the W.Ps
Mr.S.Diwakar,
Spl. Govt. Pleader for R2
in all the W.Ps

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 first respondent(s)/workmen 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-600 006.

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.41054

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.41219

W.P.Nos.3921 to 3929 of 2016

MV (CO)
RS (29/06/2017)

सत्यमेव जयते

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