

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition Nos.8549 to 8554 of 2018

& WMP Nos.10485 to 10489 & 25395 of 2018

W.P.No.8549 of 2018:-

The Management,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai 600 002 ... Petitioner
..vs..

1. The Special Deputy Commissioner of Labour,
DMS Complex, IV Floor, Teynampet,
Anna Salai, Chennai 600 006
2. C.Sivabalan, Ex-Assistant Tradesman
of MTC ... Respondents

Prayer in W.P.No.8549/2018:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records pertaining to the order passed in A.P.No.510 of 2012, dated 22.08.2017, on the file of the first respondent herein and to quash the same.

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

For Respondents:

In W.P.No.8549 & 8553/2018: Mr. N.Srinivasan, AGP.,
for R-1

In W.P.No.8550 to 8552/18 : Mr. K.K.Ramesh, G.A.,

In W.P.No.8553/2018 : Mr. Ajoy Khose, for R-2

In WP No.8549 to 8552/18 : Mr. S.T.Varadarajulu, for R-2

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C O M M O N O R D E R

These writ petitions have been filed by the Management challenging the dismissal of the Approval Petitions, wherein the learned Special Deputy Commissioner of Labour, Chennai, rejected the Approval Petitions, on the ground that: (a) those petitions are filed belatedly; and (b) as the enquiry report is not filed, it is not possible to decide, whether domestic enquiry had been conducted in accordance with the guidelines adumbrated in Lalla Ram v. DCM Chemical Works, AIR 1978 (SC) 1004.

2. The dates and events relating to the dispute between the management and the workmen is furnished hereunder for the easy reference:-

"W.P.No.8549/2018:

2nd respondent was appointed and worked as Tradesman.

25 (vi) of the Certified Standing Order - unauthorised absence to the duty.

25 (XL iii) - Due to unauthorized absence that there was a revenue loss to MTC.

22.2.2011 - Onwards absented to the duty.

21.3.2011 - Charge memo was issued.

28.3.2011 - Notice / charge memo was returned as "left".

Domestic enquiry was ordered and the same was held in fair and proper manner.

4.4.2012 - Enquiry Officer's report.

9 times - 2nd respondent was punished.

None of the punishment was challenged.

489 days unauthorized absented to the duty in between 22.2.2011 to 25.6.2012.

227 days worked in between 2008 to 2012, i.e., 5 years period.

67 alone worked in between 26.6.2012 to 20.10.2012.

5.5.2012 - second show cause notice.

11.6.2012 - acknowledged the 2nd show cause notice.

23.6.2012 - explanation was submitted and he has given undertaking that he come and join the duty.

26.6.2012 - Permitted to join the duty.

30.12.2012 - Again unauthorised absence to the duty.

3.12.2012 - Terminated from service.

12.12.2012 - A.P.No.510 of 2012, approval petition was filed.

11 documents were filed and marked on the MTC side.

6 documents were filed on the employee's side.

Finding: (i) Domestic enquiry proceeding was not filed.

(ii) Not filed the A.P. in time.

22.8.2017 - A.P.No.510 of 2012 rejected."

"W.P.No.8550/2018:

2nd respondent was appointed and worked as Driver, Thiruvannamiyur Depot.

25 (vi) of the Certified Standing Order was violated - unauthorised absence to the duty.

25 (XL iii) - Due to unauthorized absence that there was a revenue loss to MTC. And the same is reimbursable from the employee to the MTC.

1.6.2010 - Onwards unauthorized leave.

6.7.2010 - Charge memo was issued.

16.7.2010 - Charge memo was acknowledged by the 2nd respondent.

No explanation was given.

10.11.2010 - Domestic enquiry notice was sent.

14.1.2011 - Domestic enquiry was held in fair and proper according to the principles of natural justice. Enquiry Officer's finding.

13 times - 2nd respondent was punished.

282 days unauthorized absented to the duty in between 1.6.2010 to 9.3.2011.

9.2.2011 - second show cause notice was sent.

25.3.2011 - acknowledged the receipt of 2nd show cause notice.

31.3.2011 - explanation was received.

21.10.2011 - Terminated order was passed.

8.11.2011 - A.P.No.426 of 2011, approval petition was filed.

10 documents were marked on the MTC side.

2 documents were marked on the 2nd respondent side.

3.7.2017 - A.P.No.426 of 2011 rejected."

"W.P.No.8551/2018:

5.1.1990 - Appointed the 2nd respondent as Driver.

25 (vi) of the Certified Standing Order - unauthorised absence.

25 (XL iii) - Due to unauthorized absence that there was a revenue loss to MTC.

21.4.2011 - Onwards absented to the duty.

11.5.2011 - Charge memo was issued.

26.5.2011 - Acknowledged the charge memo.

No explanation.

12.12.2011 - Domestic enquiry notice was sent to the 2nd respondent.

Participated the domestic enquiry.

27.12.2011 - enquiry officer's report.

15 times - 2nd respondent was punished.

420 days unauthorised absence in between 21.4.2011 to 20.06.2012.

10.2.2012 - second show cause notice.

7.4.2012 - acknowledged the 2nd show cause notice.

16.4.2012 - show cause notice was affixed in the depot notice board.

22.6.2012 - Termination order.

29.6.2012 - A.P.No.244 of 2012 - Approval Petition was filed.

9 documents were marked as Exhibits P1 to P9.

D.A. Not properly paid.

A.P. not filed in time.

3.7.2017 - A.P.No.244 of 2012 rejected."

"W.P.No.8553/2018:

2nd respondent was appointed and worked as Conductor.

25 (vi) of the Certified Standing Order - unauthorised absence to the duty.

25 (XL iii) - Due to unauthorized absence that there was a revenue loss to MTC.

22.5.2012 - Report from the Tambaram Depot.

30.5.2012 - Charge memo was issued.

24.8.2012 - Explanation for the charge memo with medical certificate. No satisfied the explanation, domestic enquiry was ordered.

8.2.2013 - domestic enquiry notice was sent to the 2nd respondent.

7.3.2013 - Enquiry was held in fair and proper and according to the principles of natural justice.

Enquiry Officer's report.

14 times - 2nd respondent was punished.

515 days unauthorized absented to the duty in between 8.3.2012 to 31.7.2013

20.4.2013 - second show cause notice.

9.5.2013 - acknowledged the 2nd show cause notice.

28.5.2013 - explanation for the 2nd show cause notice.

5.9.2013 - Terminated from service.

18.9.2013 - A.P.No.280 of 2013, approval petition was filed.

9 documents were marked on the petitioner's side.

7 documents were marked on the employee's side.

Finding: (i) Not filed enquiry proceedings.

(ii) Not send to the Medical Board.

(iii) Too harsh - Punishment,

(iv) Not full month salary was paid.

(v) Not filed in time.

5.9.2017 - A.P.No.280 of 2013 was rejected."

"W.P.No.8552/2018:

2nd respondent was appointed and worked as Conductor.

Irregular in attending the duty.

25 (vi) of the Certified Standing Order was violated by the 2nd respondent.

25 (XL iii) - Due to unauthorized absence that there was a revenue loss to MTC.

1.6.2006 - Onwards absented to the duty.

Charge memo was issued.

No explanation was submitted.

Domestic enquiry was ordered and the same was held in fair and proper manner.

Domestic enquiry report proved that the charges are framed against the 2nd respondent are proved without any reasonable doubt.

6 documents the second respondent was furnished.

30.3.2008 - second show cause notice was sent to the 2nd respondent.

24.4.2008 - The explanation was submitted.

8.5.2008 - Reinstatement was ordered.

Even after issuance of the reinstatement order, the 2nd respondent never joined the duty.

23.5.2008 - Terminated from service.

2 years absented.

33 (2) (b) of the I.D. Act 1947, Approval Petition was filed.

3.7.2017 - A.P.No.1 of 2017 rejected."

"W.P.No.8554/2018:

The 2nd respondent was appointed and worked as Driver.

5.6.2012 - onwards unauthorized absence to the duty.

25 (vi) of the Certified Standing Order was violated - unauthorized absence to the duty.

25 (XL iii) - Due to unauthorized absence that there was a revenue loss to MTC. And the same is reimbursable from the employee to the MTC.

10.6.2013 - Charge memo was issued.

29.6.2013 - Acknowledged the charge memo.

No explanation was given.

In order to give an opportunity, a Domestic enquiry was ordered and held according to the principles of natural justice.

13.11.2013 - enquiry officer's report was submitted.

16 times - 2nd respondent was punished.

805 days unauthorized absence in between 5.6.2012 to 18.8.2014.

5.12.2013 - second show cause notice was sent.

27.1.2014 - Acknowledged the receipt of 2nd show cause notice.

22.1.2014 - 2nd show cause notice was affixed in the Depot Notice Board also.

26.8.2014 - Termination order was passed.

33 (2) (b) - As per the Industrial Dispute Act, one month salary and Form T was sent.

3.9.2014 - A.P.No.155 of 2014 - Approval Petition was filed.

9 documents were marked on the MTC side.

8 documents were marked on the 2nd respondent side.

5.9.2017 - A.P.No.155 of 2014 rejected."

3. Both sides were heard extensively on the contentions raised by them in the writ petitions.

4. When this Court expressed the view that, instead of paying 17 (B) wages, the workmen could be taken into service and current wages can be paid, then the possibility of finally disposing the issues were also discussed.

4.1. Under those circumstances, affidavits have been filed on behalf of the petitioner-Management (six numbers) expressing the terms and conditions under which reinstatement should take place.

The exact reproduction of the affidavits read as under:-

"a) the 2nd respondent ought to have forego the entire back-wages.

b) the 2nd respondent ought to undergo medical fitness before the Board.

c) the continuity of service and pay scale based upon the last drawn salary when the 2nd respondent was terminated from service.

d) the 2nd respondent may not compare the proposed pay fixation of his co-employee's present

salary to the above facts are true."

5. With regard to the above terms and conditions, the learned counsel representing the workmen were also heard.

6. Condition Nos.(a) and (b) in the affidavits are accepted by the workmen without any modification.

7. So far as condition Nos. (c) and (d) are concerned, they are modified subject to the approval of both sides.

8. In the light of the agreement reached by both sides, the following order is passed, in these writ petitions:-

□(i) Reinstatement of the workmen is ordered and that would be without any monetary benefits from the date of dismissal till the date of reinstatement. However, the workmen will be entitled to current wages from the date of their joining.

(ii) During the period of non-employment, the contribution payable to the Pension Fund Trust by the employer shall be paid. Employees are not entitled to bonus for the period of non-engagement / non-employment.

(iii) The workmen are entitled to the benefits of intervening 12 (3) settlement. The continuity of service, increment due and other benefits shall be on notional basis for the purpose of calculation of eligible period of pension.

(iv) The workmen shall report for duty on or before 22.10.2018, subject to medical fitness.□

9. In the light of the above order, the dismissal of the Approval Petitions are hereby confirmed. Subject to the above conditions, these writ petitions are ordered in the above terms. No costs. Consequently, the connected WPMPs are closed.

01.10.2018

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Note to office.: Issue order copy on or before 05.10.2018

To

1. The Special Deputy Commissioner of Labour,
DMS Complex, IV Floor, Teynampet,
Anna Salai, Chennai 600 006

Dr. S.VIMALA, J.,

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& WMP Nos.10485 to 10489 & 25395 of 2018

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