

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.11897 of 2016 and
W.M.P.Nos.10275 of 2016 & 36440 of 2018

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

-vs-

1.Thiru.N.Ravi Kumar
2.The Special Deputy Commissioner of Labour,
D.M.S.Office, Teynampet,
Chennai-600 006. ... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the order passed in A.P.No.437 of 2011 dated 19.12.2014 on the file of the 2nd respondent herein and quash the same

For Petitioner : Mr.M.Chidambaram

For R1 : Mr.S.T.Varadarajulu

For R2 : No Appearance

O R D E R

The Petitioner / Management has come forward with the present Writ Petition, challenging the order of the Authority passed under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947'), rejecting the Approval Petition in A.P.No.437 of 2011 on 19.12.2014.

2. For the sake of brevity, the parties would be referred to by their original nomenclature in the Order dated 19.12.2014 as 'the Management' and 'the Workman' and the facts are also being taken from the said Order.

3. From the facts pleaded therein, it is seen that the Workman was a Driver in Route No.E.N.H.973 (28B) running between

Egmore and Ennore and on 05.06.2010, he had caused an accident by dashing against a Cyclist due to his rash and negligent driving, as a result of which, the Cyclist died on the spot. An enquiry was conducted after issuance of charge memo and in the domestic enquiry, charges were held to be proved and the Workman was dismissed from service on 28.10.2011. As the Industrial Dispute raised by the Workman was pending, the Management was constrained to obtain approval from the authority concerned / 2nd Respondent herein for taking action against the Workman. Hence, an application in A.P.No.437 of 2011 has been filed by the Management before the 2nd Respondent after complying with all the mandatory provisions that are required, including payment of one month wages, etc.

4. The 2nd Respondent, bearing in mind the judgment of the Hon'ble Supreme Court in the case of Lalla Ram vs. Management of DCM Chemical Works Ltd., and others, reported in AIR 1978 (SC) 1004, has framed five issues, which read as follows:

(i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;

(ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;

(iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;

(iv) whether the employer has paid or offered to pay Wages for one month to the employee; and

(v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

5. Subsequently, the 2nd Respondent has rejected the said petition, holding that the Management did not produce the enquiry proceedings in order to ascertain as to whether the finding rendered by the Enquiry Officer is in strict adherence to the principles of natural justice and whether the compliance of procedures is duly followed.

6. Though it has been contended by the Management that the proceedings had been annexed along with the petition, this Court is not inclined to accept the said contention, as the proceedings would certainly be voluminous in nature, in which,

documents would have been marked; there would be recording of evidence and also discussion of the enquiry officer with regard to the finding, etc. and hence, the finding of the 2nd Respondent that non filing of enquiry proceedings is fatal, is perfectly valid.

7. It is contended by the Management that the Workman was paid the last drawn wages of Rs.13,323/- by way of Cheque No.377679 dated 28.10.2011. However, on the side of the Workman, it is submitted that he was not given Dearness Allowance and other benefits and hence, there was a short-fall of monthly wages payable to the Workman. Since there is no evidence to show that the Management has paid the actual last drawn wages, the Authority came to the conclusion that one month wages has not been properly paid. The Management has filed Ex.P8 before the Authority in proof of his last drawn wages as Rs.13,323/- and therefore, this Court is of the view that when there is no evidence on the contention of the Workman that there was a revision in pay pursuant to the increase in Dearness Allowance, which has been extended to other employees, the observation made by the Authority that the Management has not paid the last drawn wages cannot be accepted, as the last drawn wages of the Workman was admittedly Rs.13,323/- as per Ex.P8. Hence, the finding of the Authority that the entire last drawn wages had not been paid to the Workman, is not sustainable and needs interference by this Court.

8. In terms of Rule 64 of the Tamil Nadu Industrial Disputes Rules, 1958, when a dismissal order is passed, the Approval Petition needs to be filed simultaneously and in this case, the dismissal order was passed on 28.10.2011 and that there was a delay of 10 days in filing the Approval Petition. As the Approval Petition has not been filed within time as contemplated under Rule 64 of the I.D.Rules, in the considered opinion of this Court, there is a procedural irregularity and therefore, the Authority was right in rejecting the Approval Petition.

9. In the midst of argument, the learned counsel for the Workman has submitted that the Workman had made an application, claiming wages under Section 17B of the Act. The issue, as to whether such application is maintainable against an order passed under Section 33(2) (b) of the Act has got to be adjudicated in detail. It is appropriate to state here that once an Approval Petition filed by the Management is rejected by the Authority, then it has to be construed that the Workman is deemed to be in service, as if there is no order of dismissal, as per the principle laid down by this Court in the case of Tata Iron and Steel Company Ltd., Vs. G.Ramakrishna Ayyar and Another reported in 1950 LLJ 1043 Madras High Court.

10. At this juncture, learned counsel for the Management has submitted that the Workman was gainfully employed in Trade Lex College, Kalpakkam, after his dismissal from service and the Management has got an evidence to establish the same and therefore, the Workman is not entitled to any wages. However, it has been contended by the Management that on reinstatement, they are prepared to pay the last drawn wages without any revision and the Workman is willing to accept the offer made by the Management and is ready to report for work within 30 days from the date of receipt of a copy of this order.

11. In view of the above, the Writ Petition is partly allowed and the Management is directed to issue an order of reinstatement to the Workman as agreed upon within a period of fifteen days from the date of receipt of a copy of this order and on such an order being issued, the Workman is expected to join duty within fifteen days thereafter. It is further made clear that it is open to the Workman to file an application under Section 33C(2) of the Industrial Disputes Act, 1947, if he claims the revision of wages. In case he confines only to the last drawn wages, it is open to him to seek remedy under Section 33C(1) of the Industrial Disputes Act, 1947 in view of the decision of the Apex Court in the case of Fabril Gasosa vs. Labour Commissioner, reported in (1997) 3 SCC 150 and there is no need for the Workman to file an application under Section 33C (2) of the Industrial Disputes Act, 1947, claiming admitted amount and the application under Section 33C(1) is maintainable. If any such application is made based on the last drawn wages, still it is for the Authority to look into the aspect of gainful employment and order proportioned amount due to the employee and a certificate for revenue recovery may also be issued. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

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Sub Assistant Registrar

To:

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

+1 cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.68716

+1 cc to M/s.M.Chidambaram, Advocate, S.R.No.68405

W.P.No.11897 of 2016

GP (CO)

SSM(01/11/2019)