IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.08.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.22763 and 22764 of 2008

R.Nathamuni ...Petitioner in W.P.No.22763/2008

G.Janardhanan ...Petitioner in W.P.No.22764/2008

Vs.

The Management of
Metropolitan Transport Corporation
(Chennai) Ltd.,
Anna Salai, Chennai- 600 002 ...Respondents in both WPs

Prayer in both W.Ps: Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records relating to proceeding No.10621/Su.Pi (O.Na)14/MTC/2007 dated 26.07.2008 of the respondent and quash the same.

For Petitioner : Mr.S.T.Varadarajulu

For Respondent : Ms.Pavithra Sundarajan
for Mr.K.Moorthy

COMMON ORDER

Mr.S.T.Varadarajulu, learned counsel on record for writ petitioner in both the writ petitions and Ms.Pavithra Sundarajan, learned counsel representing Mr.K.Moorthy, Standing Counsel for 'Metropolitan Transport Corporation (Chennai) Ltd.,' (hereinafter 'MTC' for the sake of brevity) are before this Virtual Court.

2. With the consent of both the aforementioned counsel, captioned writ petitions are taken up together and with further consent of learned counsel on both sides, captioned writ petitions were heard out for final disposal. To be noted, lone respondent in both the writ petitions i.e., MTC has not filed counter affidavit, but learned counsel submits that arguments can be advanced without a counter affidavit considering the nature of the matter.

3. The entire matter turns on a very narrow compass and therefore, it is not necessary to dilate much on facts. Essential facts imperative for appreciating this order are that the two writ petitioners in captioned two writ petitions are working as drivers with MTC and they were attached to the Central Depot of MTC at the Head Quarters. In other words, the writ petitioners were serving as workshop drivers in the central depot of MTC.

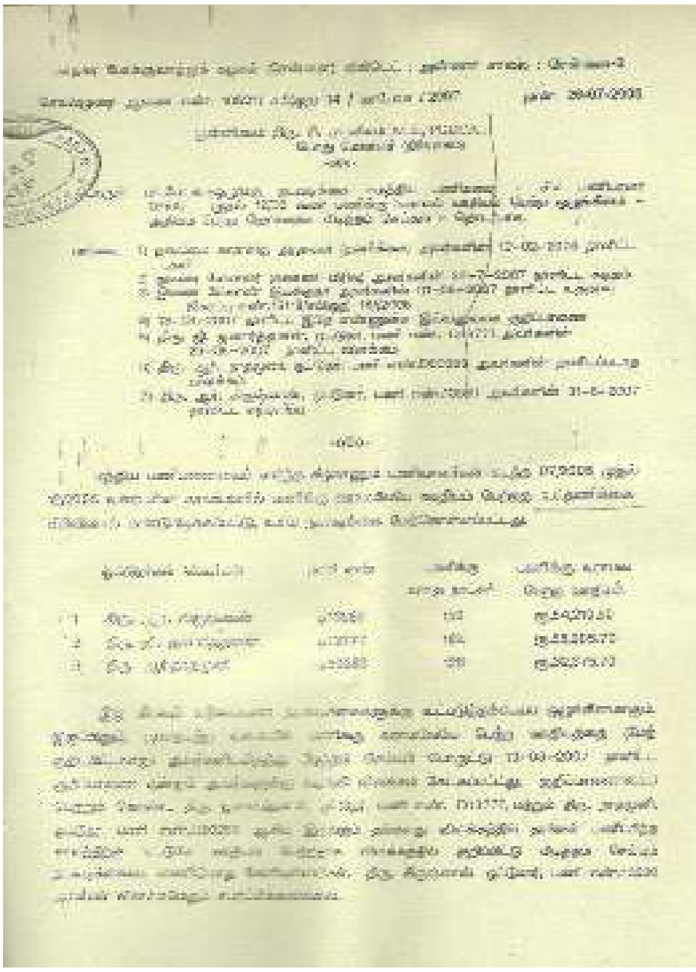
4. Elaborating on the above, learned counsel for writ petitioners submits broadly that the nature of the duty qua workshop drivers within central depot are parking of vehicles inside the depot, shifting the vehicle near the fuel pump and bringing material directed by the store-keeper from Chrompet workshop. However, what is of significance is, it is submitted that petitioners, when they are permitted to go outside the depot, security will permit the petitioners vide a gate pass.

5. In the above setting i.e, when things stood as above, the writ petitioners were visited with separate charge memos both dated 13.08.2007 bearing reference proceeding No.10621/rgp(xe) 14/ khnghf/2007 with regard to writ petitioner in W.P.No.22763 of 2008 and No.10621/rgp(xe)14/khnghf/2007 with regard to writ petitioner in W.P.No.22764 of 2008. The sum and substance of this charge memos is that for a period of 6 months i.e., from July 2005 to December 2005, the writ petitioners did not do duty/have not worked, but have been paid salary for this period. The writ petitioners were called upon to give their explanation vide these charge memos. Both the writ petitioners sent separate, but similar response / explanations. The explanations are to the effect that the charge was denied saying that the writ petitioners have in fact reported to duty/worked during the aforementioned six months period and therefore, it is incorrect to say that they have drawn salary for the six months period without working.

6. Thereafter, without conducting an enquriy and without affording any further opportunity to the writ petitioners, two separate 'orders both dated 26.07.2008 bearing reference No.10621/சபி(ஒந)14.மாபோக.2007 with regard to writ petitioner in W.P.No.22763 of 2008 and bearing reference No.10621/சபி(ஒந) 14.மாபோக/2007 with regard to writ petitioner in W.P.No.22764 of 2008' (hereinafter 'impugned order' in singular and 'impugned orders' in plural for the sake of convenience) were made ordering recovery of the salary paid to the writ petitioners for the aforementioned period.

7. Learned counsel for writ petitioners submits that no opportunity has been given to the writ petitioners post

explanations and no enquiry has been conducted. This Court deems it appropriate to scan and reproduce the two impugned orders and the same are as follows:



உட்தணிக்கை பிரிவின் அறிக்கையின் படி பணிக்கு காலம் ஊதியம் பெற்றது உறுதி செய்யப்பட்டுள்ளது. தங்களது விளக்கம் ஏற்றுக் கொள்ளத்தக்கதாக இல்லை. எனவே பணிபுரியாமல் பெற்ற மேற் குறிப்பிட்ட ஊதியத் தொகை முழுவதும் தங்களது மாத ஊதியத்தில் தவணை முறையில் பிடித்தம் செய்ய இறுதி உத்தரவு பிறப்பிக்கப்படுகிறது.

(ஒம்) சி. பாலசிவம்,
பொது மேலாளர் (இயக்கம்)

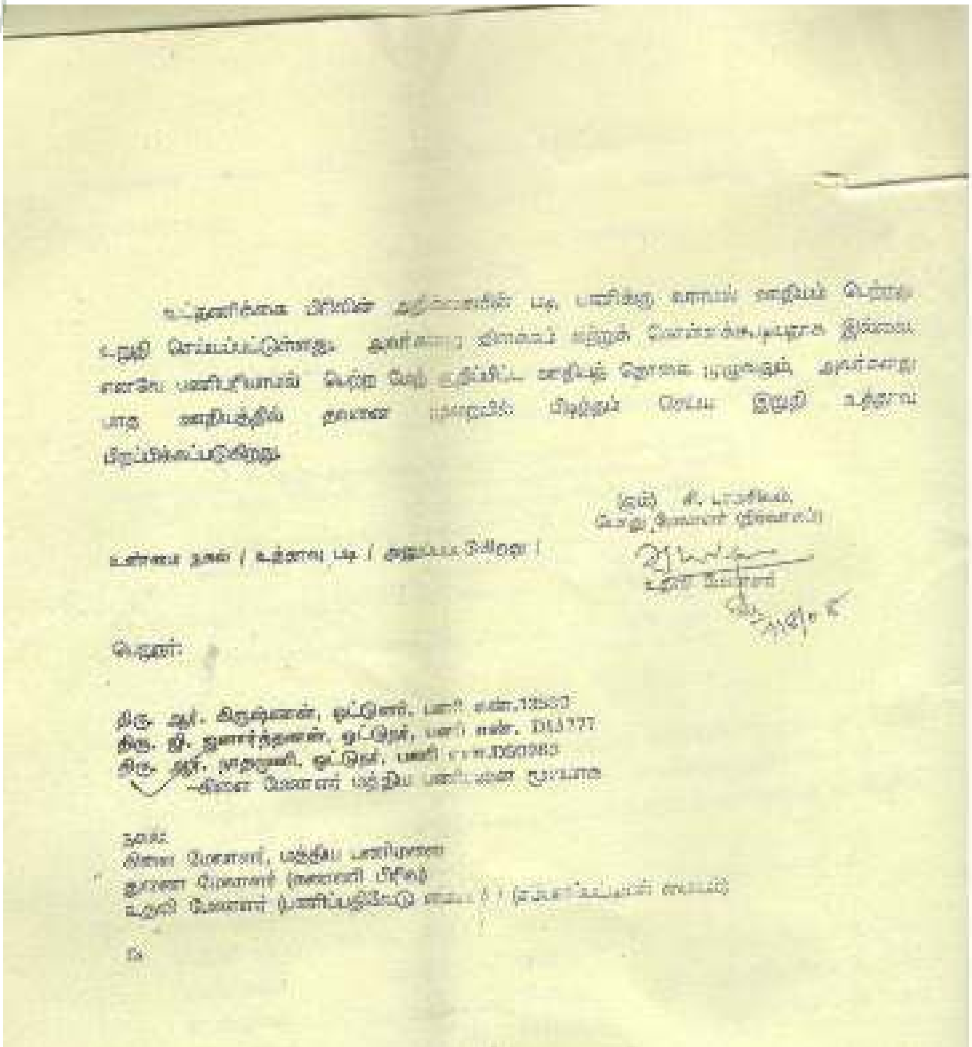
உண்மை நகல் / உத்தரவு படி / அனுப்பப்படுகிறது /

உதவி மேலாளர்

பெறுநர்:

திரு. ஆர். கிருஷ்ணன், ஓட்டுநர், பணி எண்.12500
திரு. ஜி. ஜனார்த்தனன், ஓட்டுநர், பணி எண். D11777
திரு. ஆர். நாகராஜன், ஓட்டுநர், பணி எண்.050261
—கிளை மேலாளர் மத்திய பணிமனை மூலமாக.

நகல்:
கிளை மேலாளர், மத்திய பணிமனை
துணை மேலாளர் (வணிகம் பிரிவு)
உதவி மேலாளர் (பணியமைப்பு [illegible] கணக்கு [illegible])



8. Learned counsel submitted that the aforementioned proceedings are governed by Standing Orders made for MTC under the Industrial Employment (Standing Orders) Act, 1946 and these Standing Orders provide for an enquiry in cases of this nature.

9. In response to the above submission, learned counsel for MTC while not disputing that Standing Orders govern MTC submits that the writ petitioners have an alternate remedy and it is open to the writ petitioners to approach the Labour Court.

10. By way of reply, learned counsel for writ petitioners submits that the period for which allegedly the writ petitioners were paid without doing work is in the second half of 2005 whereas the charge memo itself was issued more than two years later i.e., on 13.08.2007 and the impugned orders came to be made on 26.07.2008 almost one year later.

11. This Court carefully considered the rival submissions. This Court now proceeds to give its dispositive reasoning by discussing the rival submissions.

12. At the outset, this Court noticed that there is no disputation or disagreement before this Court that the aforesaid proceedings are governed by Standing Orders for MTC which provide for enquiry in cases of this nature. Therefore, it follows as a sequitur that an enquiry ought to have been conducted before the impugned orders came to be passed/made. A careful perusal of the impugned orders reveals that they are terse and the impugned orders, which are identical do not give reasons either for accepting the internal audit report or for negativing the explanation given by the writ petitioners. In other words, it is a terse non-speaking order and in any event, an enquiry has not been conducted. An order can be epigrammatic, but it cannot be laconic and non-speaking, which does not give the reasons, but recovery has been ordered by such orders, that too without enquiry.

13. The impugned orders have already been scanned and reproduced supra. A perusal of the same will reveal that the last and concluding paragraph alone is of relevance and last and concluding paragraph consisting of three sentences (four lines) does not give any reason either for accepting internal audit report or for negativing the explanations of the writ petitioners though impugned orders say that internal audit report is accepted and explanations of writ petitioners are negatived. Owing to these facts and circumstances of the case, the plea of alternate remedy does not impress this Court in this case. It is made clear that this is a view taken by this Court on facts and circumstances of this case. Alternate remedy qua Article 226 is an issue which is well settled and law is clear that it is a self-imposed restraint qua writ Courts. In this case, this Court is convinced that owing to the facts and circumstances of the case narrated thus far, the alternate remedy plea does not hold water. The further reason is, even if the writ petitioners were to approach the Labour Court, at the end of the day, enquiry not being conducted and the impugned orders being passed without the enquiry, would be the ground on which the challenge to the impugned orders would be predicated. Therefore, no useful purpose would be served by relegating the writ petitioner to Labour Court and it would be more appropriate that this Court interferes to set aside the impugned orders on the lone ground of enquiry not being conducted in accordance with Standing Orders without expressing any opinion or views on the merits of the matter. In other words, the impugned orders are set aside merely on the ground that no enquiry has been conducted in accordance with the obtaining

Standing Orders, which provide for an enquiry to be conducted in matters of this nature.

14. Captioned writ petitions are allowed and impugned orders, both dated 26.07.2008 bearing Reference No.10621/Su.Pi (O.Na) 14/MTC/2007 and No.10621/Su.Pi(O.Na) 14 / MTC/2007 are set aside. There shall be no orders as to costs. Consequently, miscellaneous petitions are closed. There shall be no order as to costs.

Though obvious, it is made clear that the sequitur to this order is, if any recovery had been made pursuant to the impugned orders (until interim orders were granted by this Court on 18.09.2008), the same will have to be returned to the writ petitioners.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gpa

To

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

+2 CCs to Mr.K.Moorthy, Advocate, Sr 40188.
+1 CC to Mr.S.T.Varadarajulu, Advocate, Sr 40166.

W.P.Nos.22763 & 22764 of 2008

PMK(CO)
LS(08/09/2021)