



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P. No.9696 of 2021

and

WMP. Nos.10279 & 13641 of 2021

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

...Petitioner

..Vs..

1.The Special Joint Commissioner of
Labour, D.M.S. Complex, IV Floor,
Teynampet, Chennai - 600 006.

2.Mr.K.Baburaj

...Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the order passed in A.P. No.10 of 2018 dated 07.01.2021 on the file of the 1st respondent, Chennai -6 and quash the same.

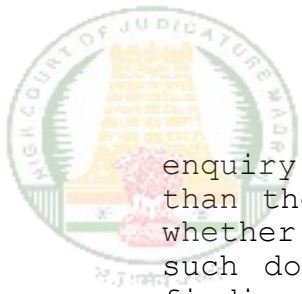
For Petitioner : Mr.M.Chidambaram
For Respondent : Mr.S.R.Karthikeyan,
for R2

O R D E R

This Writ Petition has been filed, challenging the order of the 1st respondent made in A.P.No.10 of 2018 dated 07.01.2021, by which, the Approval Petition filed by the Management for dismissal of the 2nd Respondent / Employee, was rejected.

2. The Management has come forward with this Writ Petition, challenging the order of the Authority dated 07.01.2021, refusing to grant approval. The Rejection Order was passed, on the ground that the enquiry proceedings have not been produced by the Management and that the employee was not paid one month wage.

3. The Authority proceeded on the basis that there was no notice on the Employee regarding intimation of enquiry proceedings and held that charges have not been properly established. When the Authority came to the conclusion that the



enquiry proceedings have not been produced, no other finding than the one as stated supra can be arrived at, irrespective of whether an opportunity was given to the employee or not, when such document is absent before him. The employee has filed the findings of the Enquiry Officer (Ex.P.11), a reading of which, shows that the employee was given due opportunity. This Court, in Management, Tamil Nadu State Transport Corporation (Villupuram) Limited, Kancheepuram Region, Kancheepuram vs. M.Chitti Babu (deceased) and others, 2021-I-LLJ-17, by referring to Paragraphs Nos.31 and 34 of the judgment of the Apex Court in John D'Souza vs. Karnataka State Road Transport Corporation, (2019) 18 SCC 47, held that once the domestic enquiry is vitiated, the matter will have to be remanded. The relevant passage of the order of this Court reads as follows:

5. Insofar as the question relating to validity of the domestic enquiry is concerned, it would be necessary to focus here that the Hon'ble Supreme Court of India in the decision in John D'Souza v. Karnataka State Transport Corporation (Order dated 16.10.2019 in Civil Appeal No. 8042 of 2019) has explained the law relating to the procedure to be adopted in a proceeding for approval under Section 33(2)(b) of the Act with reference to the earlier rulings, as follows:-

"31. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified....



order of dismissal has been set aside, the employee is deemed to be in service and is entitled to wages from the date of the order that has been set aside, till the order of the Approval Authority is interfered with by the Higher Forum. Once the approval is rejected, the order of dismissal becomes non-est in the eye of law and the employee is deemed to be in service even if the dismissal relates back. Hence, this Court holds that the employee is entitled to wages from the date of the order of dismissal till today.

7. At this juncture, it is represented by Mr.Chidambaram, learned counsel for the petitioner that a sum of Rs.3,00,000/- has already been deposited before the Labour Court, pursuant to the interim order. The employee is entitled to withdraw the same together with accrued interest. However, it is made clear that the employee must be paid last drawn wages from the date of dismissal till this date, as the dismissal order has not been accepted by the Approval Authority. Since the order has now been interfered with, the order of dismissal stands restored today, of course it relates back.

8. In the result, the Writ Petition is allowed and the matter is remitted back to the Approval Authority for fresh consideration. The Authority shall hear the Approval Petition and decide the same in accordance with law, within a period of six months from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the parties concerned. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

dpq
To:

The Special Joint Commissioner of Labour,
D.M.S. Complex, IV Floor,
Teynampet, Chennai - 600 006.

+1 CC to Mr.M.Chidambaram, Advocate sr 35466.

W.P. No.9696 of 2021

SRA(CO)
SP(28/10/2021)