



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.25406 of 2016

and

W.M.P.Nos.21722 & 21723 of 2016

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

...Petitioner

-Vs-

1.G.Perumal

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

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records pertaining to the order passed in A.P.No.532 of 2011 dated 31.07.2013 on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For R1 : Mr.P.Sanjaigandhi
Government Advocate

For R2 : Mr.S.T.Varadharajulu

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.



2. In the present case, the first respondent herein was terminated from services on 18.08.2008. Pursuant to the termination, the management had filed an approval petition on 22.11.2011 under Section 33(2)(b) of the Industrial Disputes Act. The award passed on 31.07.2013, pursuant to the approval petition, is put under challenge in the present writ petition by the management.

3. It is a settled proposition of law that under Section 33(2)(b) of the Act, the management is required to file an application seeking for approval simultaneously with the termination order or atleast at the earliest possible time. This Court, in identical circumstances in the case of The Management, Metropolitan Transport Corporation (Chennai) Ltd. Vs. K.Ganesan and another, passed in W.P.No.18929 of 2016, dated 21.10.2021, had an occasion to deal with such a situation by placing reliance on the decisions of the Hon'ble Supreme Court of India in the following manner:

"Under Section 33(2)(b) of the Industrial Disputes Act, 1947, the employer is mandated to file an Approval Petition at the time of terminating an employee or atleast immediately on such termination. In the instant case, the petitioner/corporation had terminated the employee on 27.12.2007 and after more than five years, the petitioner had filed an application on 23.02.2013. The law with regard to such belated filing of an Approval Petition under Section 33(2)(b) has been well settled in various decisions including the decision in Lalla Ram vs. D.C.M. Chemical Works Ltd., reported in (1978) 3 SCC 1, as well as the decision in John D'Souza vs. Karnataka State Road Transport Corporation reported in (2019) 18 SCC 47."

4. In this case, admittedly, the approval petition was filed after two years and three months from the date of the termination order. Such a delay is not only inordinate, but also against the very principle of requirement under Section 33(2)(b) of the Act. There is no legality or justification in the belated filing of the Approval Petition by the management.

5. For the foregoing reasons, I do not find any merits in the present writ petition and accordingly, the writ petition stands dismissed. No costs. Consequently, connected



miscellaneous petitions are closed. In consequence to the order of the dismissal, the first respondent herein would be entitled for all the monetary benefits during the period of his non-employment, as if he was always in continuous service under the petitioner-Corporation. The petitioner shall endeavour to disburse the arrears of such monetary benefits, within a period of 8 weeks from the date of receipt of a copy of this order. In view of the present order passed, the first respondent herein, since is deemed to be in service, should be accommodated forthwith in service by issuance of appropriate work orders.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

hvk
To

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

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

+1 CC to Mr.M.Chidambaram, Advocate sr 68537
+1 CC to Mr.S.T.Varadharajulu, Advocate sr 68467
+1 CC to The Government Pleader sr 69072.

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and
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KSM(CO)
SP(20/01/2022)