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W.P.No.7034 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7034 of 2019

and

W.M.P.No.7750 of 2019

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

...Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
D.M.S.Complex, IV Floor,
Teynampet, Anna Salai,
Chennai – 600 006.

2.Mr.E.Natarajan

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the order passed in A.P.No.436 of 2011 dated 23.07.2018 on the files of the first respondent and quash the same.



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For Petitioner : Mr.R.Ramanlal
Additional Advocate General
Assisted by Mr.M.Chidambaram

For R1 : Mr.P.Kumaresan
Additional Advocate General
Assisted by
Mr.S.John J.Rajasingh
Additional Government Pleader

For R2 : Mr.K.Malaikkannu

ORDER

The order passed by the 1st respondent in Approval Petition No.436 of 2011 dated 23.07.2018 is sought to be quashed in the present writ petition.

2. Metropolitan Transport Corporation Chennai Limited is the petitioner, who filed the Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947.

3. The first respondent-Special Deputy Commissioner of Labour adjudicated the issues as per the principles laid down by the Hon'ble Supreme Court of India in the case of **Lalla Ram vs. DCM Chemical Works Ltd [(1978) 3 SCC 1]**.



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4. Accordingly, the 1st respondent formed an opinion that he was not in a position to decide, whether the enquiry was conducted in compliance with the principles of natural justice or not. Consequently, he found that *prima facie* case has not been made out. However, it is a case of victimization and DA was not paid. Further, there was a delay of 8 days in filing the Approval Petition.

5. As far as the delay in filing the Approval Petition is concerned, if it is meagre, which is explained by the Management, then the petition is to be entertained and need not be rejected on the ground of meagre delay. The petitioner is Metropolitan Transport Corporation and performing public services. While so, there may be certain administrative difficulties in getting approval from the competent authorities, which may result in delay. Therefore, if the meagre delay in filing an Approval Petition and it is explained by the Corporation, then such a delay is to be condoned by the competent authorities and the issues are to be decided on merits.

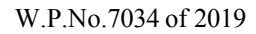


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6. In the present case, the delay of 8 days is meagre and therefore, it is to be condoned.

7. As far as the first issue is concerned, if the Management has not produced any files, then the 1st respondent, who is a Quasi-Judicial authority, is empowered to call for the records from the Management and decide the issues on merits and in accordance with law. Contrarily, the first respondent cannot simply make a finding that he is not in a position to form an opinion regarding the compliance of rules of natural justice. Such a finding shows that the 1st respondent has not scrutinized the records available with the Management. When the Quasi-Judicial authorities, while adjudicating the issues, is empowered to call for the records from the Management. Instead of deciding the issues on merits, they cannot simply form an opinion that they are unable to decide the issues. Such a finding is untenable. The disciplinary proceedings were initiated. An enquiry was conducted. Thus, files must be available with the Management. Under those circumstances, files are to be scrutinized and the authorities competent are



8. In the present case, no such exercise had been done by the 1st respondent. Thus, it is to be remanded back for fresh adjudication. Accordingly, the order passed in A.P.No.436 of 2011 dated 23.07.2018 is quashed and the matter is remanded back to the 1st respondent for fresh consideration. The parties are at liberty to submit additional documents and evidences available with them and on receipt of the same, the 1st respondent is directed to examine the entire records with reference to the procedures followed and the opportunities provided to the charged official and thereafter pass orders by affording an opportunity to all the parties and decide the issues as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.



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9. With these directions, the writ petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

25.11.2022

Index : Yes
Speaking order: Yes
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To

1. The Special Deputy Commissioner of Labour,
D.M.S.Complex, IV Floor,
Teynampet, Anna Salai,
Chennai – 600 006.



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S.M.SUBRAMANIAM, J.

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