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W.P.No.33630 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.33630 of 2016

and

W.M.P.No.29000 of 2016

The Management,
Metropolitan Transport Corporation (Chennai) Ltd.
Anna Salai, Chennai-600002.

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
D.M.S.Complex, IV Floor,
Teynampet, Chennai - 600006.

2.Shri C.Masilamani

... Respondents

Prayer : Writ Petition is 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.58 of 2014 dated 11.1.2016 on the file of the 1st respondent herein and quash the same.

For Petitioner : Mr.R.Ramanlal - AAG, Assisted by
Mr.M.Chidambaram

For Respondents : Mr.P.Kumaresan, AAG Assisted by
Mr.S.John J.Raja Singh [R.1]
: No appearance [R.2]



W.P.No.33630 of 2016

WEB COPY The order dated 11.01.2016, passed in A.P.No.58 of 2014, is under challenge in the present writ petition.

2. The second respondent is the ex-employee of the writ petitioner Corporation, who served as a Driver. The petitioner Corporation says that the second respondent was a habitual unauthorized absentee and several opportunities were granted to him. Since there was no improvement in his conduct, the authorities initiated a disciplinary proceeding against him. A charge memo was issued and a domestic inquiry was conducted. Thereafter, by affording an opportunity to the delinquent employee, a final order was passed imposing the penalty of removal from service.

3. The second respondent delinquent employee had not participated in the domestic inquiry and remained ex-parte. The petitioner Corporation filed an Approval Petition in A.P.No.58 of 2014, and the first respondent authority adjudicated the issues with reference to the principles laid down by the Hon'ble Supreme Court in the case of ***Lalla Ram***.



W.P.No.33630 of 2016

4. The findings of the first respondent reveal that regarding the compliance of the Rules of Natural Justice, the Authority was not in a position to form a final opinion. However, the second issue was decided by stating that the charges were not proved based on the evidence and there is no victimization. There is a delay of 13 days in filing the Approval Petition and the salary for a month has also not been paid.

5. The learned Additional Advocate General made a submission that the first respondent made a finding without recording any reasons for such findings. Merely because an ex-parte inquiry was conducted by the authorities, the first respondent formed an opinion that it is a case of no evidence. Such a finding is perverse in view of the fact that the ex-parte inquiry is to be conducted only after providing an opportunity to the charged official and in the present case the opportunity was afforded to the workman but he failed to avail the opportunity and therefore, in such circumstances, the procedures followed for conducting an ex-parte inquiry and the records available in this regard are to be verified by the first respondent by affording opportunities to all the parties.



W.P.No.33630 of 2016

6. All the ex-parte inquiries cannot be held invalid in a blanket manner. Ex-parte inquiry is valid, provided it was conducted by affording opportunity to the workman and the provided opportunity was not availed by the said workman. Therefore, it requires the scrutinization of files, service of notice to the workman and other procedures to be followed. In the absence of examining the files in this regard, the first respondent ought not to have formed an opinion that it is a case of no evidence.

7. The learned Additional Advocate General made a submission that the workman had remained unauthorizedly absent for about 650 days and they are having sufficient records to establish the unauthorized absence and such records were not considered by the first respondent in the Approval Petition.

8. The Competent Authority is exercising the statutory powers conferred under Section 33(2)(b) of the Industrial Disputes Act. Therefore, if doubt arises while adjudicating the issues, the authority competent is empowered to call for the files from the employer and verify the procedure followed for the ex-parte inquiry or regarding the findings in the inquiry report. In the absence of examination of those records, the first respondent



W.P.No.33630 of 2016

ought not to have formed an opinion that it is a case of no evidence. Such a finding is perverse and the conclusion arrived at is based on no reason. The authority competent must record the reasons for such conclusions. In the event of not recording the reasons, the order should be treated as non speaking order.

9. Thus, this Court is of the considered opinion that the first respondent, in such circumstances, must call for the records, verify the procedures followed and the materials available on record, and thereafter arrive at a conclusion on merits and in accordance with law.

10. In the present case, the findings of the first respondent reveal that sufficient reasons were not recorded for arriving at the conclusion and therefore, this Court is of the opinion that the case is to be remanded back for fresh consideration.

11. Accordingly, the order dated 11.01.2016, passed in A.P.No.58 of 2014, is quashed and the matter is remanded back to the first respondent for fresh adjudication. The first respondent is directed to call for the records from the writ petitioner Management, examine the records,



W.P.No.33630 of 2016

adjudicate the issues by affording opportunity to all the parties, and thereafter pass speaking orders by assigning reasons for the arrived conclusion on merits and in accordance with law. Such an exercise is directed to be done as expeditiously as possible.

12. With the above directions, the Writ Petition stands **allowed**. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.11.2022

sha

Internet : Yes
Index : Yes
Speaking order

To

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W.P.No.33630 of 2016

S.M.SUBRAMANIAM, J.

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