



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.22874 OF 2018

AND

W.M.P.NO.26744 OF 2018

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

... Petitioner

.Vs.

R.Palani

... Respondent

PRAYER:-

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records pertaining to the order passed in A.P.No.432 of 2011 dated 28.02.2018 on the files of the Special Deputy Commissioner of Labour, Teynampet, Chennai - 600 006 and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents : Mr.K.M.Ramesh

ORDER

The prayer sought for herein is for a writ of certiorari calling for the records pertaining to the order passed in A.P.No.432 of 2011 dated 28.02.2018 on the file of the Special Deputy Commissioner of Labour, Teynampet, Chennai - 600 006 and quash the same.

2. The respondent was working as a Conductor at the petitioner Corporation against whom a disciplinary proceedings was initiated for the alleged charge of unauthorised absence for 8 days and more.



3. Pursuant to which, a charge memo was prepared and based on which, a domestic enquiry was conducted since the respondent did not appear for the domestic enquiry, it was conducted ex parte and during the relevant point of time since there was an industrial dispute pending before the concerned authority, it became necessitated for the petitioner management to seek an approval for such decision taken to terminate the petitioner pursuant to the said domestic enquiry conducted in this regard under Section 33(2)(b) of the Industrial Disputes Act, 1947.

4. Such an application to seek approval from the Labour Commissioner was sent by the petitioner management and the said application having been considered was rejected by the Labour Commissioner by the order impugned dated 28.02.2018 in A.P.No.432 of 2011. Challenging the same, the petitioner management has filed the present writ petition.

5. Heard Mr.M.Chidambaram, learned counsel appearing for the petitioner who would submit that, though notice had been sent to the respondent employee, it could not be served, therefore it was pasted in the Notice Board and subsequently, as the respondent employee did not cooperate or turn for conducting the enquiry, the management decided to proceed with an ex parte enquiry and accordingly an ex parte domestic enquiry was conducted and ultimately the Enquiry Officer, having considered the evidences available with him filed on behalf of the petitioner management, has come to the conclusion that, the charge made against the respondent i.e. unauthorised absence has been proved, based on which, the petitioner management has taken a decision to terminate the respondent from service by taking into account the Enquiry Officer's report as well as the earlier punishment awarded by the petitioner management to the respondent, where, 12 time such kind of punishment has been awarded to the respondent employee.

6. When that application was made to the Labour Commissioner, he has not considered the said application in proper perspective and has only proceeded to decide all the questions based on the Hon'ble Supreme Court judgment in Lalla Ram Vs. DCM Chemical Works AIR 1978 (SC) 1004 and come to a cryptic conclusion that, before the Labour Commissioner, except the Enquiry Officer's report nothing since has been filed by the petitioner management, such a question as to whether the domestic enquiry was properly conducted and the appropriate opportunity was given to the employee during the domestic enquiry and the evidences in support of the charge whether has been properly filed and that has been appreciated by the domestic Enquiry Officer could not be decided and also the application for approval since has been submitted with 11 days delay that was also taken as one of the ground and for all these



reasons, the Labour Commissioner has come to the conclusion that, the domestic enquiry as well as the subsequent disciplinary action made against the respondent employee was not in consonance with the established procedure and accordingly, the Labour Commissioner rejected the approval application of the petitioner through the impugned order.

7. In this context, the learned counsel would canvass the point that, since the respondent employee has not cooperated for domestic enquiry, there had been no other option except to go for an exparte domestic enquiry on the part of the petitioner management and therefore, that cannot be found fault with against the respondent.

8. Moreover, the Enquiry Officer's report though had been filed before the Labour Commissioner, merely because the enquiry proceedings like, on what date the enquiry was conducted, what proceedings went on by sending a notice or recording of evidence, since had not been filed, that was taken as a prime reason to reject the approval application.

9. The learned counsel would further submit that, in this case if a chance had been given to the petitioner management even that proceedings would have been filed before the Labour Commissioner, without even giving such opportunity to the petitioner management to produce the enquiry proceedings since the Labour Commissioner has proceeded to reject the approval application filed by the petitioner, the impugned order is vitiated on that ground itself, therefore the learned counsel seeks indulgence of this Court against the impugned order.

10. However, Mr.K.M.Ramesh, learned counsel appearing for the respondent employee would contend that, no notice has been served on the respondent employee and it is an admitted fact that, the notice had been pasted only in the Notice Board. Assuming that, it is an exparte enquiry conducted by the petitioner management, what are all the evidences filed in support of the charge memo on behalf of the employer should have been appreciated by the Enquiry Officer and in the Enquiry Officer's report, nothing has been stated about what is the evidence that has been produced either orally or document wise by the management. When that being so, without any evidence since the exparte enquiry said to have been conducted which ultimately concluded against the respondent by way of the maximum punishment of dismissal from service, the Labour Commissioner having considered all these aspects, has rejected the approval application, of course correctly, and therefore the impugned order does not warrant any interference from this Court, he contended.



of producing the enquiry proceedings had been given by the Labour Commissioner to the petitioner management, the petitioner management could not have improved their case by filing those proceedings, because, in that proceedings except these two documents, not even a single piece of document/evidence is available.

18. Hence, this Court has no hesitation to hold that, the domestic enquiry was not conducted in proper manner and no appreciation of evidence seems to have been taken place before the Enquiry Officer during the enquiry. For these two prime reasons, the order passed by the Labour Commissioner rejecting the approval application of the petitioner can very well be justified.

19. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

That the impugned order is very well sustained and therefore it does not warrant any interference, hence this writ petition deserves to be rejected, accordingly it is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Special Deputy Commissioner of Labour,
Teynampet, Chennai - 600 006.

+2ccs to Mr.M.Chidambaram, Advocate, S.R.Nos.33428 & 32915
+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.32967

W.P.NO.22874 OF 2018

NK(CO)
PBS/20/06/2022