



W.P.No.39177 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.39177 of 2016

and

W.M.P.No.33549 of 2016

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

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour
Under Sec.33 (2) (B) of the
Industrial Disputes Act, 1947, Chennai.

2.Mr.N.Aruna Giri

... 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. 380 of 2011 dated 30.03.2015 on the file of the 1st respondent herein and quash the same.

For Petitioner : Mr.R.Ramanlal , 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.39177 of 2016

ORDER

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The order dated 30.03.2015 passed in A.P.No.380 of 2011 is under challenge in the present writ petition.

2. The petitioner is the Metropolitan Transport Corporation Chennai Limited. The second respondent workman was employed as a conductor in the petitioner's Corporation. He remained unauthorisedly absent for about 569 days and consequently, disciplinary proceedings were initiated, a charge memo was issued, a domestic inquiry was conducted and thereafter the punishment of removal from service was imposed on the second respondent workman.

3. The petitioner Management filed an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act. The first respondent adjudicated the issues by framing 5 issues as per the judgement of the Supreme Court in ***Lala Ram's*** case.

4. The learned Additional Advocate General made a submission that absolutely there is no reason for arriving at a conclusion with reference to the issues framed by the first respondent in the Approval Petition. The first



W.P.No.39177 of 2016

respondent made a finding that he is unable to arrive at a conclusion regarding the compliance of the Principles of Natural Justice by the writ petitioner at the time of conducting the disciplinary proceedings. Such a finding is untenable and based on the said finding, the first respondent ought not to have rejected the Approval Petition. The first respondent further formed an opinion that there is no prima facie evidence for the purpose of establishing the charges of unauthorised absence against the workman. Such a finding is also not based on any reason recorded by verifying the files regarding the disciplinary proceedings.

5. Findings in this regard, ought to be made only after examining the files and the procedures followed by the employee. In the absence of examining those files, the authority competent cannot form a final opinion regarding the compliance of Principles of Natural Justice and about the prima facie materials available on record to establish the charges. Since the said exercise has not been done, the case is to be remanded back for fresh consideration.

6. It is brought to the notice of this Court that there was no delay in filing the Approval Petition. Regarding the payment of one month salary,



W.P.No.39177 of 2016

the dearness allowance was not calculated. In this regard, it is contended that adding the dearness allowance cannot be taken into consideration and as per the statute, one month salary is to be paid and the salary, as admissible, was paid to the employee and thus, on that ground the Approval Petition cannot be rejected.

7. In view of the facts and circumstances, the order dated 30.03.2015 passed in A.P.No.380 of 2011 is quashed and the matter is remanded back for fresh consideration. The first respondent is directed to call for the entire records from the writ petitioner Management, examine the same, adjudicate the issues by affording opportunity to all the parties, and thereafter pass speaking orders on merits and in accordance with law as expeditiously as possible.

8. With these directions, the writ petition stands **allowed**. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.11.2022

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Internet : Yes

Index : Yes

Speaking order

<https://www.mhc.tn.gov.in/judis>



W.P.No.39177 of 2016

To
WEB COPY

- 1.The Management of Metropolitan
Transport Corporation (Chennai) Ltd.
Pallavan Illam, Anna Salai, Chennai 2.
- 2.The Special Deputy Commissioner of Labour
Authority Under Sec.33 (2) (b) of the
Industrial Disputes Act, 1947, Chennai.



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W.P.No.39177 of 2016

S.M.SUBRAMANIAM, J.

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W.P.No.39177 of 2016
and
W.M.P.No.33549 of 2016

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