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W.P.No.7153 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7153 of 2016
and W.M.P.No.6356 of 2016

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

...Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
Authority under Section 33(2)(b) of the ID Act, 1947
Chennai.

2.R.Devarajan

Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the order passed by the 1st respondent in Approval Petition in A.P. No.168/2010 dated 18.07.2013 and to quash the same as illegal.



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For Petitioner

: Mr.R.Ramanlal
Additional Advocate General

assisted by
Mr.C.Gauthama Raj

For Respondents

: Mr.S.John J.Raja Singh
Additional Government Pleader for R1

Mr.S.T.Varadarajulu for R2

ORDER

The order passed in A.P.No.168/2010, dated 18.07.2013 is under challenge in the present writ petition.

2.The petitioner is Metropolitan Transport Corporation, Chennai Ltd. The 2nd respondent was employed as a Conductor and remained unauthorizedly absent from attending duty. Consequently, disciplinary proceedings were initiated and a charge memo was issued on 18.11.2008 for unauthorized absence. The petitioner states that ample opportunities were granted to the 2nd respondent workman to defend his case. Subsequently, an Enquiry Officer was appointed who in turn conducted an enquiry and submitted his final report. Based on the findings of the Enquiry Officer and by affording further opportunity to the workman, the



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disciplinary authority imposed the punishment of removal from service. As per the statutory requirement under Section 33(b)(2) of the Industrial Disputes Act, the petitioner filed Approval Petition in A.P.No.168/2010 and the 1st respondent adjudicated the issues and arrived at a conclusion that the petitioner Management had not followed the principles of natural justice and further a *prima facie* case has not been established against the workman. In respect of other questions framed pursuant to the Lalla Rams' case, the 1st respondent decided in favour of the petitioner Management.

3.The learned Additional Advocate General appearing on behalf of the petitioner Corporation made a submission that the findings are not based on the documents which were produced. Though, the 1st respondent states that notice for domestic enquiry was issued to the delinquent officials acknowledgment card had not been produced. If at all, such acknowledgment card had not been enclosed along with notice, it is well within the power of the 1st respondent to call for the records and examine the acknowledgment or otherwise. Without even examining the documents in entirety, the 1st respondent formed an opinion that the enquiry was conducted in violation of the principles of natural justice which is perverse and



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cannot be construed as a complete adjudication of issues.

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4.The learned counsel for the 2nd respondent workman objected the said contention by stating that it is the duty of the Management to furnish all the documents. It is not for the workman to establish the case of the writ petitioner Management. Since the relevant records were not available on record, 1st respondent he had arrived a conclusion that the principles of natural justice had been violated and thus, there is no infirmity and the writ petition is to be rejected.

5.Large number of writ petitions are filed against the order passed in Approval Petitions filed under Section 33(2)(b) of the Industrial Disputes Act. The Labour Officers are mechanically framing five issues as per the judgment of the Supreme Court in Lalla Rams' case. No doubt, the issues are being framed rightly as per the judgment of the Supreme Court by the Labour Officer. However, the adjudications are not done properly and in a judicious manner and in compliance with the requirements as contemplated.

6.The Labour Officers are exercising *quasi* judicial powers under the



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Industrial Disputes Act. The very purpose of object of Section 33(2)(b) of the Act is to ensure that the employers conduct the disciplinary proceedings in compliance with principles of natural justice and based on some evidence and the punishment imposed is proportionate with the gravity of the proved charges.

7.While forming a final opinion with reference to the issues framed, the Labour Officers are bound to look into the documents and evidence on record. In the event of any doubt regarding the procedures followed by the employer, then the Labour Officers are well within their power to call for the records and examine the same and thereafter, form a final opinion regarding the procedures followed. Contrarily, they cannot decide the issues in a mechanical manner merely based on the documents filed alone. Whenever doubt arises regarding the acknowledgment of the charge memo or enquiry report or otherwise, it is the duty of the Labour Officer to call for the records from the employer and find out whether the notice amongst were served to the workmen or not. Without even calling for the records and examining the same, the Labour Officers cannot unilaterally made an opinion that in the absence of producing acknowledgment, the notice was not served to the workmen. Such findings will lead to miscarriage of justice, since the facts are not



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make available before the Labour Officer. Regarding these aspects no inference is permissible, records are to be verified. Therefore, the Labour Officers in such circumstances must call for the records and thereafter, form a final opinion.

8. In the present case, a copy of the enquiry notice was marked as document, however, the acknowledgment was not marked. Thus, the 1st respondent ought to have called for the records so as to ensure whether the workman acknowledged the enquiry notice or not. Without even conducting any such enquiry, the 1st respondent formed an opinion that there is no proof regarding the acknowledgment of the enquiry notice by the workmen. Such an interference drawn is improper and not based on the established principles. At all circumstances, an adjudication must be done with reference to the documents and evidence and if any doubt arises regarding the issues, the Labour Officer has to call for the records and thereafter, decide the issues.

9. In this regard, the Hon'ble Supreme Court of India in the case of ***John D'Souza vs. Karnataka State Road Transport Corporation*** reported in ***2019 18 SCC 47*** settled the issues.



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10. In the present case, the workman attained the age of superannuation in the year 2013. This being the factum established, the order dated 18.07.2013 passed in A.P.No.168 of 2010 is quashed and the matter is remanded back to the 1st respondent for fresh adjudication. The 1st respondent is directed to adjudicate the issues by calling for the entire records relating to the disciplinary proceedings from the Management and decide the issues on merits and in accordance with law and by affording an opportunity to all the parties and dispose of the same, within a period of three months from the date of receipt of a copy of this order.

11. With this direction, this writ petition stands allowed. No Costs. Consequently, connected miscellaneous petition is closed.

15.11.2022

Index : Yes

Internet : Yes

Speaking order : Yes

ssr

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To

The Special Deputy Commissioner of Labour,
Chennai.



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S.M.SUBRAMANIAM, J.

SSR

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