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W.P.No.27990 of 2017

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.27990 of 2017
and
W.M.P.No.30029 of 2017

The Management,
Metropolitan Transport Corporation,
(Chennai) Ltd.,
Pallavan Salai, Chennai – 2,
Rep.by its Managing Director.

...Petitioner

Vs.

1.A.Kesavan

2.The Special Deputy
Commissioner of Labour,
D.M.S. Compound,
Chennai.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 2nd respondent made in A.P.No.14/2015 dated 24.04.2017 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947 and thus, render justice.



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For Petitioner : Mr.R.Ramanlal
Additional Advocate General
Assisted by Mr.C.Gauthamaraj

For R1 : Mr.G.Murali

For R2 : Mr.P.Kumaresan
Additional Advocate General
Assisted by
Mr.S.John J.Rajasingh
Additional Government Pleader

ORDER

The order passed by the 2nd respondent in Approval Petition No.14 of 2015 dated 24.04.2017 is sought to be quashed in the present writ petition.

2. The Writ Petitioner/Management instituted the disciplinary proceedings against the first respondent/workman for the charges relating to unauthorised absence. After conducting an enquiry, the Disciplinary Authority imposed the punishment of removal from service.

3. Consequently, the writ petitioner/Management filed an Approval Petition under Section 33 (2) (b) of the Industrial Disputes Act. The 2nd respondent / Special Deputy Commissioner of Labour adjudicated the issues



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with reference to the principles laid down by the Apex Court in the case of

Lalla Ram vs. DCM Chemical Works Ltd [(1978) 3 SCC 1].

4. Accordingly, the 2nd 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, the salary was paid and there was a delay of 7 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 7 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 second 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 second 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 2nd 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



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circumstances, files are to be scrutinized and the authorities competent are bound to look into the files for forming an opinion, whether the procedures as contemplated were followed or not and an opportunity was provided to the charged official or not.

8. In the present case, no such exercise had been done by the 2nd respondent. Thus, it is to be remanded back for fresh adjudication. Accordingly, the order passed in A.P.No.14 of 2015 dated 24.04.2017 is quashed and the matter is remanded back to the 2nd 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 2nd 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.

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Index : Yes

Speaking order: Yes

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To

1. The Special Deputy
Commissioner of Labour,
D.M.S. Compound,
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S.M.SUBRAMANIAM, J.

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