



WEB COPY



W.P.No.29403 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2023

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

W.P.No.29403 of 2013

and

M.P.No.1 of 2013

and

M.P.Nos.1 and 3 of 2015

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

...Petitioner.

Vs.

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

2.S.Raju (Deceased)

3.R.Vasanthi.

4.R.Dhanushikodi.

5.R.Ishwarya.

6.S.Jeyalakshmi

...Respondents.

(R3 to R6 substituted as LR's of deceased second respondent vide order dated 03.04.2023 made in W.P.No.29403 of 2013 by JNBJ)



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue writ of Certiorari to call for the records of the order passed by the 1st respondent in Approval Petition in A.P.No.34 of 2010 dated 27.12.2012.

For Petitioner : Mr.C.Gawtham Raj
For Respondents :
For R1 : Court
For R2 : Dismissed vide court order dated 03.06.2015
For R3 to R6 : Ms.M.D.Leelavathy.

ORDER

Learned Counsel for the petitioner seeks for writ of certiorari to call for the records of the order passed by the 1st respondent in Approval Petition in A.P.No.34 of 2010 dated 27.12.2012.

2. The facts leading to this case are the deceased 2nd respondent (S.Raju) was working with the writ petitioner as a Tyre Man. While gate check was conducted it was found that the 2nd respondent has stolen copper wire of 6 ft. and 4 ft. This was found in the vehicle of the 2nd respondent. Therefore, a complaint was sent by the Depot Manager on 03.11.2008 and a charge memo was issued on 04.11.2008. An explanation to the charge memo was given on 21.11.2002 as the explanation was not satisfactory the respondent instituted an enquiry.



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3.The enquiry officer submitted a report stating that the charges were framed were proved, on the basis of which a second show cause notice dated 08.10.2009 was sent to the 2nd respondent. Finally, holding the reply was not satisfactory, the writ petitioner dismissed the deceased 2nd respondent from service on 22.04.2010.

4.Simultaneously an approval petition was being filed. The 1st respondent who went to the approval petition came to a conclusion that the management had paid one month wages as required under Section 33 (2) (b) of the Industrial Disputes Act. The proceedings of the management say that the payment of salary, filing of application and the order of dismissal were made simultaneously and it also held that the action was a *bona-fide* one. However, it was found that the enquiry was not in compliance of the principles of natural justice and that there is no *prima-facie* case available for imposition of the punishment.

5. Mr.C.Gawtham Raj, learned counsel for the petitioner would vehemently contend that having come to the conclusion that there is no



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victimization, should have the 1st respondent had allowed the approval petition and granted the approval as required under Section 33 (2) (b).

6. Learned Counsel for the legal heirs of the deceased respondent would submit that the enquiry was in utter violation of Principles of Natural Justice and also there is no *prima-facie* case for imposition of punishment. I have carefully considered the arguments of either side and cogent reasons have been given by the authority in paragraph Nos. 3 and 4 of the order as to how he finds violation of principles of natural justice as to why there is no *prima-facie* case in the said proceeding.

7. I am not persuaded of the argument, learned counsel for the petitioner would submit that there has been misapplication of law or any perversity attached to it, therefore, I am not inclined and the writ petition is dismissed.

8. Apart from this finding, on the merits, the transport department has taken a stand that in case of the deceased employee whose approval petition has been dismissed, who have expired during litigation, the department



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would settle eligible death cum retirement benefits to the legal heirs upto the date of the retirement whichever is earlier. It has also stated that it will treat the non-employment as with (no pay no work). Therefore, in the light of the above, I am not inclined to interfere, the writ petition stands dismissed. No costs. Connected miscellaneous petitions are also closed.

13.06.2023

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Index : Yes/No

Speaking : Yes/No

Neutral Citation Case : Yes/No



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V.LAKSHMINARAYANAN,J
nst

To:

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

W.P.No.29403 of 2013
and
M.P.No.1 of 2013
and
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(1/2)