



WEB COPY



W.A. No. 1871 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.A. No. 1871 of 2022

&

C.M.P. No. 13699 of 2022

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

..Appellant

Vs.

1. Thiru G. Perumal

2. The Special Deputy Commissioner
Of Labour,
D.M.S. Complex, IV Floor,
Teynampet, Anna Salai,
Chennai – 600 006.

..Respondent



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Prayer: Writ Appeal as against the order dated 20.12.2021 in W.P. No. 25406 of 2016.

For Appellant :: Mr.Raamanlal,
Additional Advocate General
assisted by
Mr.M. Chidambaram

For Respondents :: Mr.S.T. Varadarajulu for R1

J U D G M E N T

S. VAIDYANATHAN,J.

AND

J. SATHYA NARAYANA PRASAD,J.

The present appeal has been preferred against the order dated 20.12.2021 in W.P. No. 25406 of 2016.

2. The 1st respondent/workman joined the service of the appellant Corporation as a driver and for unauthorised absence, he was proceeded with and after enquiry, was dismissed from service on 18.8.2008. Admittedly, the dispute between the Union and the appellant Corporation



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was pending before the authority concerned. In such an event, the Corporation/employer will have to obtain the approval of their action by filing a petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short, “ I.D. Act”). However, the employer, in the present case, had filed an approval petition after a delay of 2 years, apart from the fact that wages for one month had not been paid to the 1st respondent. The 2nd respondent passed an order on 31.07.2013 rejecting the approval petition challenging which writ petition was filed. By order dated 20.12.2021, the writ petition was dismissed confirming the order passed by the 2nd respondent with consequential directions. Hence, the present writ appeal.

3. Heard both sides.

4. This Court, in judgment dated 23.12.2022 in W.A. No. 32 of 2022 (*V. Palani V. The Tamil Nadu State Transport Corporation (Villuppuram) Ltd. And another*), following the decisions of the Hon'ble Apex Court in *Lalla Ram V. D.C.M. Chemical Works* reported in *AIR 1978 SC 1004* and



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John D.Souza Vs. Karnataka State Road Transport Corporation reported

in **2019 (18) SCC 47** has dealt with, as to when an application for approval has got to be filed and that in case of belated filing of approval petition, the authority is empowered to reject the application in case any one of the conditions laid down in *Lalla Ram's case* is not complied with. The order of the learned Single Judge confirming the order passed by the 2nd respondent namely, the Special Deputy Commissioner of Labour is perfectly valid.

5. At this juncture, learned counsel for the 1st respondent workman submitted across the bar that the workman is willing to give up 50% of the backwages. The employee is also willing to contribute employer's contribution to the Provident Fund trust without interest for the period of non-employment.

6. However, the learned Additional Advocate General appearing for the Management submitted that the employer has agreed to reinstate the employee provided he gives up entire backwages.



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7. This concession made by the employer is not acceptable to us, more so, when there is violation of statutory provision.

8. Taking note of the submission made by the learned counsel for the 1st respondent/workman that the workman is willing to give up 50% of backwages and also the affidavit filed to that effect, ***the employer is expected to reinstate the employee on or before 1st March, 2023.*** The workman would be entitled to continuity of service and consequential benefits as if there is no order of dismissal in the eye of law.

9. ***The employer is expected to remit a portion of Provident Fund contribution payable to the trust from 50% of backwages and shall take responsibility of remitting the same to the Provident Fund trust on or before 31st March, 2023 failing which interest is payable by the employer on the Provident Fund contribution.***



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nv

10. The writ appeal is dismissed with the above directions. No costs. Connected C.M.P. is closed.

nv

(S.V.N.J.) (J.S.N.P.J.)
01.02.2023

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