



WEB COPY



W.P.No.40544 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.40544 of 2016

and

W.M.P.No.34555 of 2016

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

... Petitioner

Vs.

1. The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
Teynampet, Chennai – 600 006.

2. R.Udayakumar

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the order passed in A.P.No.560 of 2011 dated 25.07.2013 on the file of the first respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For R1 : Mr.T.M.Rajangam
Government Advocate

For R2 : Mr.S.T.Varadarajulu



W.P.No.40544 of 2016

WEB COPY

ORDER

Heard Mr.M.Chidambaam, learned counsel for the petitioner, Mr.T.M.Rajangam, Government Advocate, learned counsel for the first respondent and Mr.S.T.Varadarajulu, learned counsel for the second respondent.

2. On charges of unauthorised absence, the second respondent was ultimately imposed with a punishment of dismissal from service, by an order dated 03.08.2009. The Petitioner Corporation had filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereafter referred to as 'the Act') on 09.12.2011, seeking for approval of the action taken by them. The Approval Petition in A.P.No.560 of 2011 came to be rejected by the first respondent authority on 25.07.2013, predominantly on the ground that one month wages, as contemplated under Section 33(2)(b) of the Act, was not paid and that the application was also filed belatedly from the date of dismissal of the second respondent herein.



W.P.No.40544 of 2016

3. The learned counsel for the petitioner Corporation submitted that the delay of two years was an administrative delay and therefore, this Court may remand the matter back to the authority for reconsideration.

4. Per contra, the learned counsel appearing for the second respondent workman submitted that the provision under Section 33(2)(b) of the Act, itself contemplates for simultaneous filing of application on the date of dismissal and therefore, the rejection order cannot be found fault with. He further submitted that the workman has not received the one month wages, along with the order of dismissal, which is also violative of the provision. He also submitted that the workman had reached the age of superannuation on 10.02.2011.

5. The Hon'ble Supreme Court, in the case of ***Lalla Ram Vs. D.C.M. Chemical Works*** reported in ***AIR 1978 (S.C) 1004***, has set forth various circumstances under which an application under Section 33(2)(b) of the Act, can be rejected and held that in case any one of these circumstances are violated, the authority will be held within his powers to reject the approval petition.



W.P.No.40544 of 2016

WEB COPY

6. In the instant case, two grounds set forth by the Hon'ble Supreme Court in *Lalla Ram's case (Supra)* have been established. Firstly, the Management had failed to pay the one month wages along with the order of dismissal, which has been stipulated by the Hon'ble Supreme Court in *Lalla Ram's case (supra)*. Secondly, the order of dismissal was made on 03.08.2009 and the Management had chosen to file their application on 09.12.2011, which is above two years. When the provision under Section 33(2)(b) of the Act, stipulates that such an application requires to be filed simultaneously with the dismissal order, two years of delay is inordinate and therefore, the order of the authority, rejecting the approval petition on this ground also, cannot be found fault with. As a matter of fact, the impugned order is totally in inconfirmity with the conditions stipulated in the *Lalla Ram's case (Supra)*. The further course of action taken by the petitioner Corporation, after passing the dismissal order, is totally illegal and unsustainable and thus, I do not find any reason to remand back the matter to the authority for reconsideration.

7. In the light of the above findings, there shall be a direction to the petitioner Corporation to forthwith pass appropriate orders, notionally



W.P.No.40544 of 2016

reinstating the second respondent workman back into service from the date of dismissal, i.e., from 03.08.2009 and disburse all the retirement benefits, including the pensionary benefits, by considering as if the petitioner was never dismissed from service, together with continuity of services and all other attendant benefits. Such orders shall be passed by the petitioner Corporation, within a period of four weeks from the date of receipt of a copy of this order.

8. Accordingly, the Writ Petition stands dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

21.02.2023

Index: Yes/No
Speaking/Non speaking order
Neutral Citation Case: Yes/No
ham



W.P.No.40544 of 2016

WEB COPY

To

1. The Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan Illam, Anna Salai,
Chennai – 600 002.
2. The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
Teynampet, Chennai – 600 006.



WEB COPY



W.P.No.40544 of 2016

M.S.RAMESH, J.

ham

***W.P.No.40544 of 2016
and
W.M.P.No.34555 of 2016***

21.02.2023