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W.P.Nos.42496, 42497 of 2016 & 4500 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.42496, 42497 of 2016 & 4500 of 2021
and
WMP.Nos.36391 & 36392 of 2016

W.P.No.42496 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,
(Under Section 33(2)(B) of the Industrial Disputes Act, 1947),
Chennai.

2. M.Arjunan

...Respondents

W.P.No.42497 of 2016:

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

...Petitioner

Vs.



W.P.Nos.42496, 42497 of 2016 & 4500 of 2021

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1. The Special Deputy Commissioner of Labour,
(U/S 33(2)(B) of the Industrial Disputes Act, 1947),
Chennai.

2. R.Elangovan (*deceased*)

3. E.Arokiyamary

4. E.Vijayalakshmi

5. E.Vijayakumar (minor)

6. E.Monika (minor)

Minors are rep. by their mother
& natural guardian E.Arokiyamary

7. R.Chandra

...Respondents

(R3 to R7 substituted as LR's of the deceased R2, vide order dated
15.11.2022 made in WMP.No.27238 of 2022)

W.P.No.4500 of 2021:

M.Arjunan

...Petitioner

Vs.

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

...Respondent

Prayer in W.P.No.42496 of 2016: Petition filed under Article 226 of The
Constitution of India praying for the issuance of Writ of Certiorari to call for
the order passed by the 1st respondent in approval petition in A.P.No.51 of
2012 dated 05.12.2014 and to quash the same.



W.P.Nos.42496, 42497 of 2016 & 4500 of 2021

Prayer in W.P.No.42497 of 2016: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for the order passed by the 1st respondent in approval petition in A.P.No.212 of 2012 dated 21.06.2014 and to quash the same.

Prayer in W.P.No.4500 of 2021: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Mandamus to direct the respondent to implement the order dated 05.12.2014 passed in App.P.No.51 of 2012 of the Special Deputy Commissioner of Labour, Teynampet, Chennai by reinstating the petitioner in service with continuity and with backwages and with all other attendant benefits.

For Petitioner : Mr.M.Chidambaram
in W.P.Nos.42496 & 42497 of 2016
: Mr.S.T.Varadarajulu
in W.P.No..4500 of 2021

For Respondents : Mr.M.Premkumar, GA, for R1
in W.P.Nos.42496 & 42497 of 2016
: Mr.S.T.Varadarajulu,
for R2 in W.P.No.42496 of 2016 &
R3 to R7 in W.P.No.42497 of 2016

COMMON ORDER

Since the issue involved in all these Writ petitions are interconnected, they are disposed of by way of this common order.

2. For brevity, the petitioner in W.P.Nos.42496 & 42497 of 2017 and respondent in W.P.No.4500 of 2021 is referred to as management and the



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respective 2nd respondent in W.P.Nos.42496 & 42497 of 2016 and the petitioner in W.P.No.4500 of 2021 are referred to as workmen. During the pendency of the writ petition in W.P.No.42497 of 2016, as the 2nd respondent/workman died, the respondents 3 to 7 were substituted as his legal heirs.

3. The facts leading to filing of these cases are as follows :

(i) Mr.M.Arjunan/the 2nd respondent in W.P.No.42496 of 2016 and Mr.R.Elangovan/the 2nd respondent in W.P.No.42497 of 2016 were working as drivers in the respective depots of the management during the relevant point of time. Whiles, for unauthorised absence without prior intimation or sanction of leave causing dislocation of the bus services in the concerned depots, charge memos were issued as against the respective 2nd respondent, based on the reports of the Branch Manager concerned, for which, they sent a reply and being not satisfied with that, an enquiry was ordered. After conducting enquiry by affording opportunity to the workmen, they were removed from service, vide orders dated 25.01.2012 and 28.05.2012 respectively. Parallely, approval petitions were filed by the management



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before the Special Deputy Commissioner of Labour, Chennai, seeking approval of the dismissal orders passed as against the workmen. However, the said approval petitions were rejected by the Special Deputy Commissioner of Labour, vide impugned orders on the ground that, no *prima facie* case had been made out, that no proper domestic enquiry was conducted as per the principles of natural justice, that the management had not paid the one month wages to the employees and that Form T was not lodged in time. Challenging the same, the management has come up with W.P.Nos.42496 & 42497 of 2017. On the other hand, for implementing the order dated 05.12.2014 made in A.P.No.51 of 2012, the workman has come up with W.P.No.4500 of 2021.

4. Learned counsel appearing for the management submitted that, upon receipt of the basic reports from the Branch Manager concerned, the management terminated the services of the workmen, after conducting proper enquiry by affording sufficient opportunity to prove their innocence and parallely sought approval under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'ID Act') from the Special Deputy



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Commissioner of Labour. After contest, the Special Deputy Commissioner of Labour rejected the approval petitions filed by the management, vide present impugned orders, which is not sustainable. Further, it is mandatory on the part of the Labour Court that, it has to consider the approval petitions filed by the management under Section 33(2)(b) of the ID Act, in terms of the law laid down by the Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, in which, the Apex Court has prescribed the procedure to be followed while deciding the approval petitions. In the present case, though the management has scrupulously followed the procedures prescribed in the case of ***Lalla ram (supra)***, before terminating the services of the workmen, however, without considering any of the said facts, the Special Deputy Commissioner of Labour has rejected the approval petitions filed by the management, which is not unsustainable and the same is contrary to the said procedures. Accordingly, he prayed for appropriate orders.

5. Learned counsel appearing for the workmen submitted that, though departmental proceedings were initiated as against the workmen for certain



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misconduct committed by them, however, for mere unauthorised absence, the management had imposed the punishment of dismissal from service, which is highly disproportionate and the Special Deputy Commissioner of Labour, after considering all the above said facts, passed the present impugned orders rejecting the approval petitions filed by the management, which does not warrant interference of this Court. He further submitted that, during the pendency of these writ petitions, the 2nd respondent in W.P.No.42497 of 2016 died and thereby, he submitted that, it would suffice if this Court issues a direction to the management to settle the entire terminal benefits in favour of his legal heirs i.e., respondents 3 to 7 therein.

6. On the above said contentions, heard learned Government Advocate appearing for the Special Deputy Commissioner of Labour, Teynampet, Chennai and perused the material documents placed on record.

7. Admittedly, the management has passed the orders of dismissal as against the workmen on the ground of unauthorized absence from duty, for which, the management filed approval petitions before the Special Deputy



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Commissioner of Labour under Section 33(2)(b) of ID Act. It is an undisputed fact that the approval petition has to be decided based on the law laid down by the Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, wherein the Apex Court held as under:-

"(i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;

(ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;

(iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;

(iv) whether the employer has paid or offered to pay Wages for one month to the employee; and

(v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."



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8. A perusal of the available materials, particularly the impugned orders reveal that, in the present cases in hand, no proper document has been produced by the management either before the Special Deputy Commissioner of labour or before this Court to show that, sufficient opportunity has been provided to the workmen to submit their explanation and to prove their innocence, which is a clear violation of principles of natural justice and that there is no due compliance of the guidelines enunciated in *Lalla Ram* case. Hence, the Special Deputy Commissioner of Labour, after considering all the material aspects, rejected the approval petitions filed by the management and this Court, upon careful perusal, is in agreement with the decision arrived at by the Special Deputy Commissioner of Labour and is not inclined to interfere with the orders impugned in these Writ petitions, as the same does not suffer from perversity.

9. Further, taking into consideration the fact that, the 2nd respondent in W.P.No.42497 of 2016 passed away during the pendency of the Writ petition and that, the 2nd respondent in W.P.No.42496 of 2016 is ready to



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forego the back wages, this Court, by exercising its inherent and extraordinary jurisdiction under Article 226 of the Constitution of India is inclined to modify the punishment by issuing the following directions :-

(i) For the 2nd respondent in W.P.No.42496 of 2016:

The management is directed to reinstate the 2nd respondent back into service, without any back wages within a period of one week from the date of receipt of a copy of this order and the 2nd respondent would be entitled for continuity of service for the purpose of terminal benefits including family pension.

(ii) For the 2nd respondent in W.P.No.42497 of 2016:

The management is directed to settle the entire terminal benefits to the respondents 3 to 7 herein, who are the legal heirs of the deceased 2nd respondent, within a period of two weeks from the date of receipt of a copy of this order. It is made clear that the deceased 2nd respondent would be entitled for continuity of service for the purpose of computing the terminal benefits including family pension.



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10. With the above observations and directions, the Writ petitions in W.P.Nos.42496 & 42497 of 2016 filed by the management stand dismissed and in view of the above modification, the writ petition in W.P.No.4500 of 2021 filed by the workman stands disposed of. No costs. Consequently, the connected Miscellaneous petitions are closed.

13.07.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

The Special Deputy Commissioner of Labour
(U/S 33(2)(B) of the Industrial Disputes Act, 1947),
Chennai.

11/12



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W.P.Nos.42496, 42497 of 2016 & 4500 of 2021

M.DHANDAPANI, J.

skt

W.P.Nos.42496, 42497 of 2016 & 4500 of 2021
and
WMP.Nos.36391 & 36392 of 2016

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