



W.A. No.1264 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.1264 of 2023 & C.M.P. No.12607 of 2023

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

Appellant

v

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

2 S. Somasundaram

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the
order dated 18.02.2022 passed in W.P. No.25243 of 2015.

For appellant Mr. M. Chidambaram

R1 Court

For R2 Mr. S.T. Varadarajulu



JUDGMENT

For the sake of clarity and to avoid verbosity, the parties will be adverted to as per their rank in this writ appeal.

2 The minimum facts required for deciding this writ appeal are set out as under:

2.1 After having dismissed the second respondent workman due to his unauthorised absence, the appellant Transport Corporation filed a petition in Approval Petition No.564 of 2011 before the first respondent authority seeking approval of the said dismissal, as is mandated under Section 33(2)(b) of the Industrial Disputes Act, 1947. The said approval petition was dismissed by the first respondent authority *vide* proceedings dated 25.07.2013.

2.2 The dismissal order passed by the first respondent authority was assailed by the appellant Transport Corporation in W.P. No.25243 of 2015, which was dismissed by a Single Bench *vide* order dated 18.02.2022.

2.3 Calling into question the legality and validity of the order dated 18.02.2022 passed by the Single Bench, the Transport Corporation has preferred the instant writ appeal.



3

The case of the appellant Transport Corporation is that the second respondent workman remained unauthorisedly absent for duty from 27.10.2006, thereby causing dislocation of bus service; hence, he was issued with a charge memo dated 15.11.2006 and not satisfied with his explanation for his absence, a domestic enquiry was conducted, in which, charges were held proved; based on the provisional conclusion with regard to the proved misconduct, a notice dated 06.12.2007 was issued to him to show cause as to why he should not be removed from service; not satisfied with the said explanation, he was removed from service on 25.02.2008.

4

According to Mr. M. Chidambaram, learned counsel for the appellant Transport Corporation, though there was a delay in filing the approval petition, taking note of the fact that the second respondent workman had derailed the services of the bus transport on account of his continuous unauthorised absence, the punishment of dismissal from service imposed on him ought to have been upheld by the authority concerned; however, while deciding the approval petition, the first respondent authority has not followed the dictum laid down in **Lalla Ram v Management of D.C.M. Chemical Works Ltd. and another**¹, since, according to the first respondent authority, the application for approval under Section 33(2)(b), *ibid.*, was not filed within the time limit.



5 According to Mr. S.T. Varadarajalu, learned counsel for the second respondent workman, it is incorrect to state that on account of absence of the second respondent workman, there was dislocation of bus service and even assuming for the sake of argument that such a stand taken by the appellant Transport Corporation is correct, the punishment of dismissal from service imposed on the second respondent workman is disproportionate to the gravity of the misconduct. He further submitted that the approval petition having been admittedly filed by the appellant Transport Corporation with a delay of three years, in the light of the judgment of this Court in **V. Palani v TNSTC and another**², in which, one of us (SVNJ) was a member, the order of the authority, as confirmed by the Single Bench, needs to be confirmed.

6 Heard both sides and perused the materials available on record.

7 As rightly argued by the learned counsel for the second respondent workman, it is an admitted fact that there was a delay of three years in filing the approval petition. At this juncture, it is worth referring to the judgment of the Supreme Court in **Lalla Ram**, *supra*, wherein, the conditions to be satisfied while deciding an application for approval under Section 33(2)(b), *ibid.*, have been set out. Those five conditions are extracted hereunder:



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"(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."

If any of the conditions set out above is not satisfied, then, the order of the employer needs to be interfered with. In the instant case, the approval application has not been filed simultaneously, but, it has been filed three years after the date of the dismissal order.

8 On the above score itself, the approval petition is liable to be rejected, which was rightly done by the authority as confirmed by the Single Bench. In the light of the judgment in **Lalla Ram**, *supra*, followed in **V. Palani**, *supra*, we uphold the order passed by the Single Bench confirming the order passed by the first respondent authority.

9 However, Mr. S.T. Varadarajulu, learned counsel for the second respondent workman submitted across the bar that the second respondent workman is willing to give up 50% of the backwages as he had attained the age of superannuation in 2017, provided he is given continuity of service and the



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appellant Transport Corporation pays the employer's contribution towards Provident Fund. He also filed a memo dated 19.06.2023 to that effect.

10 Taking into account the aforesaid memo, the second respondent workman is deprived of 50% backwages. However, it is made clear that the entire service put in by him will have to be reckoned for the purpose of continuity of service and other attendant benefits. Further, the appellant Transport Corporation shall contribute its share and the share of the second respondent workman towards Provident Fund, of course, without interest, within a period of four months from the date of receipt of a copy of this judgment, thereby enabling the second respondent workman to get correct pensionary benefits. It is needless to state that gratuity and pension, if applicable, shall be extended to the second respondent workman, within a period of four months.

This writ appeal stands disposed of in the above terms. Costs made easy.
Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
19.06.2023

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