



W.P.No.30686 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30686 of 2017
and W.M.P.No.33599 of 2017

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. S.Ramachandran

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ, order or direction of like nature calling for the records pertaining to the order passed in A.P.No.239 of 2012 dated 24.04.2017 on the files of the 1st respondent herein and quash the same.

For petitioner : M/s.M.Chidambaram

For Respondents : Mr.M.S.Premkumar,
Government Advocate for R1

: Mr.S.Nedunchezhiyan for R2.



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ORDER

Assailing the order of the 1st respondent in A.P.No.239 of 2012, the petitioner has filed this Writ Petition.

2. It is the case of the petitioner that the 2nd respondent was working as a driver in the petitioner corporation. Due to his unauthorized absence to work from 12.06.2011 to 30.09.2012, a charge memo was issued to the 2nd respondent. After conducting departmental enquiry, the petitioner was dismissed from service on 17.10.2012. Subsequently, the petitioner corporation made an Application in A.P.No.239 of 2012 under Section 33(2)(b) of the Industrial Disputes Act for approval of termination which was rejected by the 1st respondent. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that the approval petition filed under Section 33(2)(b) of the Industrial Disputes Act has been rejected by the 1st respondent contrary to the ratio laid down by the Hon'ble Apex Court in case of *Lalla Ram Vs. Management of D.C.M Chemical*



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Works Ltd and Ors in Civil Appeal No.351 of 1971 dated 16.02.1978 in which, the Apex Court has prescribed the procedure to be followed while deciding the approval petition. However, contrary to the said procedure, the 1st respondent has rejected the approval petition filed by the petitioner Corporation.

4. Learned counsel appearing for the 2nd respondent submitted that the 2nd respondent was dismissed from service on 17.10.2012, pursuant to which, the departmental enquiry was conducted by the petitioner corporation, however, the enquiry report was not placed before the 1st respondent in order to ascertain the fairness of the enquiry report. In the absence of the enquiry report, adverse remarks were made against the petitioner corporation. Though, the petitioner claims to have paid the one month salary to the 2nd respondent, no materials were placed before the 1st respondent as to the payment of one month salary in order to substantiate their claim. Further, the approval petition itself was filed with delay of five days from the date of order of dismissal. Accordingly, he prays for dismissal of this Writ Petition.



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5. Heard the learned counsel for the petitioner as well as the second

respondent and perused the materials available on record.

6. Admittedly, the petitioner Corporation has passed the order of dismissal as against the second respondent on the ground of unauthorized absence from duty, for which, the petitioner Corporation filed an approval petition under Section 33(2)(b) before the first respondent. 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. Management 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



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(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."

7. In the present case, a perusal of the records reveal that all the above aspects have been elaborately considered by the 1st respondent while rejecting the approval petition filed by the petitioner Corporation. It is evident from the materials available on record that, the enquiry was not conducted in accordance with law, which was the reason for rejection of the approval sought for. Further, there is also no materials to substantiate the compliance of payment of one month's salary. In the above backdrop, the order passed by the 1st respondent does not suffer any vice of illegality and the rejection of the approval petition is fully justified which cannot be interfered with.

8. For the reasons aforesaid, this Writ Petition is devoid on merits and the same stands dismissed accordingly. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

11.08.2023

NHS

Index : Yes / No

Internet : Yes / No



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M.DHANDAPANI, J.

NHS

To

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

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