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W.P.Nos.18463 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM :

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

W.P.Nos.18463 of 2017
and
W.M.P. No. 20040 of 2017

The Management
Metropolitan Transport Corporation
Pallavan Illam, Anna Salai
Chennai - 600 002.

... Petitioner

V

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

2 P. Balakrishnan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari, calling for the records pertaining to the order passed in A.P. NO. 572 of 2011, dated 31.07.2013 on the files of the 1st respondent herein and quash the same.

For Petitioner	: Mr. M. Chidambaram
For R1	: Mr.M.S.Premkumar GA R1
For R2	: Mr.G,Purushothaman



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ORDER

The petition has been filed seeking to quash the order passed in A.P. NO. 572 of 2011, dated 31.07.2013 on the files of the 1st respondent herein and quash the same.

2. The learned counsel for the petitioner submitted that the second respondent was appointed and worked as Driver. He was a habitual absenter and irregular in attending the duty, for which, he was issued charge memo. The second respondent has not come forward to give his explanation for the unauthorized absence for the delay of 171 days. After conducting enquiry, he was dismissed from service on 22.02.2008. Thereafter, the petitioner has filed approval petition before the first respondent under Section 33(2)(b) of the ID Act and the same was rejected. Challenging the said order, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that though the dismissal order was passed in the year 2008 and the second respondent passed away on 12.03.2019 and actual superannuation is of the year 2009. Admittedly, the second respondent frequent absentee and he was absent for 20



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times, for which, he was imposed a punishment. Against he was absent for 171 days from 04.09.2007. After conducting enquiry, he was terminated from service. However, the approval petition was rejected on the contrary to the order passed by the Honble Apex court in the case of Lalla Ram reported in AIR 1978 SCC 1004. Accordingly, the learned counsel prays that this Court may allow this petition.

4. The learned counsel for the second respondent submitted that the workman had entered into service as driver in the year 1983 and after rendering 25 year of service, he was absent for 171 days, for which, he has submitted medical records. Without conducting the enquiry, the Management has mechanically passed the order of dismissal on 22.08.2008 which was elaborately considered by the Labour Court and arrived at conclusion that Section 33(2)(b) of ID Act, has not been followed and one month salary was not paid, which is clear violation in the decision rendered by the Hon'ble Supreme Court of India in the Lalla ram's case. Further, no opportunity was given for cross examination of the Management witnesses. Hence, the learned counsel seeks dismissal of the writ petition.



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5. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

6. The facts of the case are not in dispute. Admittedly, the second respondent was working as a driver in the petitioner management in the year 1983. In the year 2007, he was unauthorized absent for 170 days. Thereby, the petitioner Management issued charge memo and departmental enquiry was conducted. After conducting enquiry, charges were proved and he was terminated from service on 22.02.2008. Thereafter, the petitioner Management has filed approval petition before the first respondent and the same was rejected. It is also equally undisputed fact that the second respondent was superannuated in the year 2009. Due to pendency of the writ petition, he was not allowed to retire from service and he passed away in the year 2018.

7. In such view of the matter, this Court perused the impugned order. On perusal of the same, which makes it clear that the management has issued charge memo on 28.09.2007, in which, the workman submitted his reply on



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24.01.2008. However, no records were produced before the Labour Court with regard to the departmental enquiry conducted by the enquiry officer. In the absence of any records, the Labour Court arrived at Section 33(2)(b) of the ID act has not been followed in this case and there is clear violation of principle natural justice. Further it is also undisputed fact that the order of dismissal has passed in the year 2008 whereas the approval petition has been filed in the year 2011. There is no proper explanation for filing the petition with such long delay. It is clear violation of section 2(b) of the ID Act and further the second respondent has not been allowed to cross examine the management witnesses. In such view of the matter, the first respondent has rightly assessed the issue and rejected the the approval petition, which cannot be interfered with and the therefore, the writ petition is liable to be dismissed. However, the workmen is entitled for 50% backwages as he was not employed till superannuation.

8. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

9. The petitioner Management is directed to settle the entire terminal benefits and also to pay 50% backwages from the date of termination to till



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the date of superannuation within a period of four weeks from the date of receipt of a copy of this order, to the legal heirs of the workman.

09.08.2023

Index : Yes / No
Speaking order / Non speaking order
Netrual Citation Case : Yes / No
rli



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To

1. The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
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M.DHANDAPANI, J.

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