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W.P.No.3846 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM:

THE HONOURABLE Dr. JUSTICE D. NAGARJUN

W.P.No.3846 of 2022
and
WMP.No.3982 of 2022

The Management
M/s. 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.Kavitha

3.S.Subash

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the order passed in A.P.No.573 of 2011 dated 05.11.2021 on the file of the first respondent, Chennai -6 and quash the same.



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For Petitioner : Mr.C.Gowthamaraj

For Respondents : Mr.R.U.Dinesh Rajkumar for R1
Additional Government Pleader
Mr.S.T.Varada Rajulu for R2 & R3

ORDER

This Writ Petition is filed by the Metropolitan Transport Corporation (Chennai) Ltd., against the third respondent/workman and the legal representatives of Sundaravel workman challenging the approval order passed by the first respondent in A.P.No.573 of 2011.

2. One Sundaravel was appointed as a driver in the petitioner's Corporation and he had unauthorisedly absent from duty, in violating Section 25 (vi) of the Certified Standing Orders. On account of his absence, there was a revenue loss to the Corporation. A charge memo was issued to Sundaravel for his unauthorised absence to the duty from 21.08.2007. He has submitted his explanation on 12.09.2007 and on 24.11.2007. On 04.12.2007 a show cause notice was sent to the employee, but he had not attended to the duty,



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thereby, he was terminated from his service on 05.05.2008.

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3. By the time, he was terminated, a common dispute was pending before the Special Deputy Commissioner of Labour, the first respondent herein. Thereby as per Section 33 (2) (b) of the Industrial Disputes Act, the management has filed an approval petition in A.P.No.573 of 2011 before the first respondent. The said petition was allowed exparte as workman Sundaravel failed to appear in the said proceedings.

4. In the meanwhile, the said workman died on 18.05.2019 and his legal representatives as respondents 2 & 3 were brought on record. They have filed Writ Petition in W.P.No.4519 of 2020 before this Court and it was disposed on 28.02.2020 remanding the matter before the first respondent for fresh disposal. Subsequently, enquiry was conducted before the first respondent and on behalf of the Management side 6 documents were filed and marked as Ex.P1 to Ex.P6. However, the first respondent ultimately rejected the said approval application.

5. It is submitted by the learned counsel for the petitioner that the order passed by the first respondent in the approval application in A.P.No.573 of 2011 is erroneous as the materials placed before the authority have not been



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considered while passing order and therefore, sought to interfere with the same.

6. The learned counsel for the respondents 2 & 3 submitted that the first respondent had considered all the aspects and gave a finding that the approval application required to be rejected on the ground that there was a delay. As there is a delay in filing the approval petition and that one month salary is also not paid, sought for dismissal of the petition.

7. Heard both sides and perused the records.

8. The workman was dismissed on 05.05.2008 whereas the approval application was filed on 14.12.2011. The approval application was filed more than three years after dismissal and that on the date of filing of the approval petition on 14.12.2011, the workman was also died.

9. It is a settled legal position that under 32(b) approval application has to be filed by the Management simultaneously while the order of dismissal was being passed. The Management is expected to file the



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approval application immediately before the first respondent for getting approval of the dismissal of the workman, but however for the reasons best known to the Management, the Management took three years to file the approval application and this ground itself is enough to dismiss the Writ Petition.

10. Further, while considering the approval application, the first respondent has formulated five points as per Lalla Ram case. While appreciating the facts it is mentioned that as per Lalla Ram case the first respondent has observed that the enquiry was not conducted in a fair and proper manner. While discussing about two issues as to whether the prima facie case is made out for the dismissal, the first respondent has found that there is no material to show that prima facie case is made out for dismissal. In response to the payment of one month salary is concerned, there is no document to show that one month salary is paid in full as discussed in the approval application and further the approval application was filed with the delay of more than three years.



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11. Considering the above, it is clear that the first respondent has rightly rejected the approval application. In order to interfere with the approval application, the petitioner is expected to make out a case that the impugned orders are passed ignoring the settled legal Law or against or ignoring the facts.

12. In view of the above there are no merits in this Writ Petition and accordingly this Writ Petition is dismissed. Since the workman died and legal representatives were brought on record as respondents 2 & 3 the Management is directed to dispose the benefits to the legal representatives as respondents 2 & 3 as expeditiously as possible. No costs.

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Index : Yes / No
Internet : Yes / No
dna

To

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



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Dr.D.NAGARJUN, J.

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