



W.P.Nos.6774 of 2022 & 21182 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.Nos.6774 of 2022 & 21182 of 2019
and WMP.N0.20387 of 2019

W.P.No.6774 of 2022

V.Palani

... Petitioner

VS.

1.The Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam,
Chennai - 600 002.

2.The Joint Commissioner of Labour,
(Special), DMS Compound,
Teynampet, Chennai — 600 006.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the proceedings No.CI/013429/2021 dated 11.08.2021 of the 2nd respondent, quash the same and consequently direct the 2nd respondent to restore A.P.No.407 of 2011 on file and to decide the approval petition on merits.

For Petitioner : Mr.S.T.Varadarajulu
For R1 : Mr.C.Gowthamaraj



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For R2

: Mr.P.Sanjay Gandhi
Government Advocate

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W.P.No.21182 of 2019

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, Anna Salai,
Chennai — 600 006.

2.D.Palani

... Respondents

Prayer: Writ Petition is 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.383 of 2011 dated 28.11.2018 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.C.Gowthamaraj
For R1 : Mr.P.Sanjay Gandhi
Government Advocate
For R2 : Mr.S.T.Varadarajulu

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ORDER

W.P.No.6774 of 2022 is filed to call for the entire records connected with the proceedings No.Cl/013429/2021 dated 11.08.2021 of the 2nd



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respondent, quash the same and consequently direct the 2nd respondent to restore A.P.No.407 of 2011 on file and to decide the approval petition on merits.

2.W.P.No.21182 of 2019 is filed to call for the records pertaining to the order passed in A.P.No.383 of 2011 dated 28.11.2018 on the file of the 1st respondent and quash the same.

3.The petitioner in W.P.No.6774 of 2022 will be referred to as petitioner and the respondent therein as respondent.

4.The petitioner in W.P.No.6774 of 2022 was employed as Tradesman in Tambaram Depot and due to ill-health was unable to attend duty. When the petitioner approached the respondent to permit him to join duty, he was informed that he was dismissed from service on 17.09.2011. The respondent filed an Approval Petition in A.P.No.407 of 2011 for approval of the dismissal order dated 17.09.2011. As there was no notice or intimation regarding the proceedings, the petitioner was not able to attend the proceedings and therefore on 29.05.2012, the petitioner was set



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ex-parte and the ex-parte order was passed on 29.05.2012. Subsequently approval was also granted. The petitioner came to know about the exparte order only in September 2013 and thereafter erroneously filed the condone delay petition and the restoration petition in Approval Number 383 of 2011 instead of Approval No.407 of 2011. Even the learned Judge considering the similarities in the name of the petitioner with one D.Palani, who also was dismissed from service and whose approval application in A.P.No.383 of 2011 was also dismissed, erroneously entertained the petitioner's application and restored A.P.No.383 of 2011 vide the order dated 28.11.2018. Against the said order restoring the application in A.P.No.383 of 2011, the respondent preferred the writ petition in W.P.No.21182 of 2019. The petitioner thereafter came to know that the restoration was not made in his Approval Petition in A.P.No.407 of 2011 but in A.P.No.383 of 2011. According to the petitioner because of the similarity in the cause title of both the petitions, the mistake took place. The petitioner thereafter filed the subject application on 30.04.2021 with a prayer to set-aside the exparte order and restore A.P.No.407 of 2011. The said application was rejected by the second respondent vide the order dated 11.08.2021.



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Aggrieved by the said order the petitioner has preferred the above writ petition.

5.The learned counsel for the petitioner submits that due to *bona fide* mistake the application to restore the Approval Petition was filed in A.P.No.383 of 2011 instead of filing in A.P.No.407 of 2011 and hence A.P.No.383 of 2011 was restored instead of A.P.No.407 of 2011. The learned counsel further submits that in A.P.No.383 of 2011 no restoration application was filed and the same was restored only on the basis of the mistaken application filed by the petitioner herein in the said A.P.No.383 of 2011 instead of A.P.No.407 of 2011.

6.The learned counsel for the respondent does not dispute that A.P.No.383 of 2011 does not relate to the petitioner. The learned counsel also does not dispute that there was a confusion in filing the application because of the similarity of cause titles in the Approval applications. The learned counsel therefore fairly concedes that both the matters may be remanded to the 2nd respondent for fresh consideration.



WEB COPY 7. It is seen firstly that the impugned order is a non-speaking order.

The explanation of the petitioner that there was a *bona fide* mistake in filing the I.A. in A.P.No.383 of 2011 due to the similarity in the names of the petitioner's, and the respondent in the cause title was not considered by the 2nd respondent and absolutely no reasons were assigned to reject the I.A. Secondly, it is seen that the application which was actually meant to be filed in A.P.No.407 of 2011, was erroneously filed in A.P.No.383 of 2011 due to the similarity in the cause titles in the Approval Applications. Therefore, A.P.No.383 of 2011 was restored, even though no application was filed therein. The said facts are admitted by the respondents counsel. Under the circumstances, I am of the view that this is a fit case for remanding both the matters to the Labour Court for fresh consideration.

8. Accordingly, the writ petitions are allowed. Consequently, the proceedings No.Cl/013429/2021 dated 11.08.2021 of the 2nd respondent and the order dated 28.11.2018 passed in A.P.No.383 of 2011 are set aside. The second respondent shall take up both the Approval Petitions in



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A.P.Nos.407 of 2011 and 383 of 2011 together and pass orders on merits within a period of four months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

23.02.2024

Index : Yes / No

Internet : Yes / No

Speaking order/Non-speaking order

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To

1.The Managing Director,
Metropolitan Transport Corporation,
Anna Salai,
Pallavan Illam,
Chennai 600 002.

2.The Joint Commissioner of Labour,



W.P.Nos.6774 of 2022 & 21182 of 2019

(Special), DMS Compound,
Teynampet,
Chennai 600 006.

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

N.MALA, J.

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