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W.P.No.35562 of 2016



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.35562 of 2016
and
W.M.P.No.30572 of 2016

The Management,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan House, Anna Salai,
Chennai-600 002.

... Petitioner

Vs.

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

2.Shri.B.Natarajan

...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for the records pertaining to the order passed in A.P.No.304 of 2013 dated 13.11.2015 on the file of the 1st respondent herein and quash the same.



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For Petitioner : M/s.M/s.T.Chandrasekaran

For Respondents : M/s.S.T.Varadarajulu [R1]

: M/s.V.Jeevagiridharan [R2]

ORDER

The petitioner Management has filed the above writ petition challenging the dismissal of their application seeking approval in A.P.No.304/2013.

2. The 2nd respondent had joined the services of the petitioner on 01.03.1985. On 31.08.2002 he was dismissed from service on the ground of unauthorized absence. Thereafter, on 09.01.2003 once again dismissal order was passed on the very same ground and the petitioner had filed an approval petition No.31/2003 which was rejected on 12.01.2004. Thereafter, the 2nd respondent was reinstated on 14.04.2004. The petitioner had issued a third dismissal order on the very same ground on 06.05.2004 and A.P.No.183/2004 was filed to approve the said dismissal. This was rejected on 11.08.2004 and on 30.08.2004, the 2nd respondent was once again reinstated.



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3. Thereafter, once again, the 2nd respondent was dismissed on the very same ground on 27.09.2013. This dismissal order was sought to be approved by the petitioner by filing A.P.No.304 of 2013 on the file of the 1st respondent. The said Approval Petition was rejected on the ground that the petitioner has not complied with the provisions of Section 33 (2) (b) of the Industrial Dispute Act. Challenging the same, the petitioner is before this Court.

4. Heard the counsels on either side.

5. From the reading of the impugned order, it appears that the petitioner has not filed the enquiry report before the 1st respondent. Additionally, one month's salary has not been paid by the management to the workman. That apart, in the absence of the enquiry report, the 1st respondent is unable to determine whether a prima facie case has been made out and whether the principles of natural justice have been followed.



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6. The Hon'ble Supreme Court in the judgment reported in ***AIR (1978) 3 SCC 1004 Lalla Ram v. D.C.M. Chemical Works Ltd.***, had made out 5 conditions that have to be satisfied for approving an order of dismissal:-

(1) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;

(2) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;

(3) 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 regard being had to the position settled by the decision of this Court that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the



management to decide and the tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment;

(4) whether the employer has paid or offered to pay wages for one month to the employee and

(5) 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. A perusal of the above discussion would clearly show that 3 out of 5 guidelines have not been followed by the petitioner



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Management. Therefore, the order passed by the 1st respondent is correct and there is no necessity to revisit the said order.

8. Accordingly, the above Writ Petition stands dismissed no costs.

15.07.2024

(shr)
Index : Yes/No
Speaking Order: Yes/No
Neutral Citation : Yes/No

To

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P.T. ASHA. J.,

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