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W.P.No.18576 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.No.18576 of 2023

AND

W.M.P.No.17812 of 2023

The Management
Metropolitan Transport Corporation (Chennai) Limited
Pallavaram
Anna Salai
Chennai 600 002

.. Petitioner

Vs

1.The Special Joint Commissioner of Labour
Authority under Industrial Disputes Act
DMS Compound
Teynampet, Chennai 600 006

2.K.Shanmugasundaram (Died)

3.Nithiyananthan

4.Valarmathi
(R3 and R4 substituted as legal heirs of deceased R2
as per order dated 21.02.2024 in WMP.2347 of 2024)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent pertaining to proceedings in A.P.No.13 of 2015 dated 30.11.2020 and quash the same and consequently allow the approval petition filed by the



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petitioner management in A.P.No.13 of 2015.

For Petitioner : Mr.A.Vinothraj
For 1st Respondent : Ms.M.Jayanthi
Additional Government Pleader
For R2 : Died
For R3 to R4 : Mr.S.Sakthivel

ORDER

The petitioner/Management has filed this writ petition challenging the order, declining approval for the order of dismissal passed by the petitioner/Management against the 2nd respondent/workman (since deceased).

2. The 2nd respondent, who was working as a Driver in the petitioner's Corporation, was dismissed from service on 22.01.2015, on the ground that he frequently absented from duty and when the petitioner/Management submitted an approval petition under Section 33(2)(b) of the Industrial Disputes Act, 1947, before the 1st respondent, it was declined.

3. The learned counsel for the petitioner/Management submitted that enquiry has been conducted only in accordance with the principles of natural justice and the 2nd respondent/workman cannot have any grievance on the same. He further submitted that the 2nd respondent/workman was not present for enquiry on certain occasions and that cannot be held against the



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petitioner/Management. He also submitted that though there were sufficient materials to substantiate the charges levelled against the 2nd respondent/workman, the 1st respondent did not appreciate the same in a proper perspective.

4. So far as victimisation is concerned, the findings of the 1st respondent is ambiguous and so far as wages is concerned, the 1st respondent has observed that there was a shortage of payment of Rs.3,309/- to the 2nd respondent/workman towards wages for one month. As regards the last aspect as to whether the application for approval has been submitted within the prescribed time limit, the 1st respondent had held that there is a delay of six days. Even the petitioner/Management cannot deny the fact that there was a delay in submitting the proposal for dismissing the 2nd respondent/workman.

5. As per the dictum laid down by the Supreme Court in ***Lalla Ram Vs DCM Chemical Works (AIR 1978 SC 1004)***, five aspects have to be established, in order to secure the approval of the Labour Commissioner, the essential portion of which reads 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



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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

(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."

6. Unless all the five aspects highlighted in the above judgment are proved to be in favour of the petitioner/Management, the 1st respondent cannot be expected to grant an order of approval for the punishment of dismissal. Even though the petitioner/Management denies the findings rendered *qua* other aspects, it cannot deny the fact that there is a delay in forwarding the proposal. In fact, the 1st respondent has rendered reasons for each and every aspect that needs to be complied with, in case of imposing the punishment of dismissal. Since the petitioner/Management did not comply with the essential conditions, the 1st respondent is justified in denying approval as contemplated under Section



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7. In view of the above discussion, I do not find any factual or legal infirmity in the order of rejection of approval passed by the 1st respondent.

8. Since the workman is no more and this writ petition is contested by the legal heirs of the deceased 2nd respondent/workman, who are his son and wife, it would be worthwhile, if the petitioner/Management works out any possibility for settlement and give a quietus to the issue.

This writ petition is dismissed with the above observation. No costs.

Connected W.M.P. is closed.

30.08.2024

gya

Index : Yes/No

Neutral Citation : Yes/No

R.N.MANJULA , J.

gya

To
1.The Special Joint Commissioner of Labour
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DMS Compound
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