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W.P.No.32519 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.32519 of 2024
and W.M.P.No.35338 of 2024

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

Versus

1. The Special Joint Commissioner of Labour,
DMS Complex, Teynampet,
Chennai - 600 006.
2. A.Subramanian .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari to call for the records relating to the order passed in Approval Petition No.120 of 2022, dated 28.11.2023, passed by the 1st respondent herein, quash the same.

For Petitioner : Mr.Gauthama Raj.C

For Respondents : Mr.K.Tamilvendan,
Government Advocate, for R1



W.P.No.32519 of 2024

WEB COPY

ORDER

This Writ Petition is filed challenging the order passed by the first respondent namely, the Special Joint Commissioner of Labour in Approval Petition No.120 of 2022, dated 28.11.2023, in and by which, the approval, which was sought for by the petitioner management was refused.

2. The brief facts leading to the filing of this Writ Petition are that the second respondent workman was working as a Driver in the petitioner management. While so, Departmental Proceedings were initiated against him alleging that he was unauthorisedly absent for about 8 days and caused disruption to the working of the management corporation. A Domestic Enquiry was conducted and thereafter, an order was passed on 27.05.2022 removing him from the service. Since the industrial dispute is pending concerning the present workman also, in accordance with the provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947, approval was sought for from the first respondent.

3. The first respondent considered the application made by the petitioner management in terms of the judgment of the Hon'ble Supreme



W.P.No.32519 of 2024

WEB COPY

Court in ***Lalla Ram Vs. D.C.M. Chemical Works Ltd. and Anr.***¹ and found that the charge against the second respondent workman is that he was unauthorisedly absent. In the Domestic Enquiry, the relevant Attendance Registers or such other evidence was not mustered, marked and brought on record and therefore, found that *prima facie*, finding in the Domestic Enquiry is without any evidence whatsoever. On that ground and further finding that the order of punishment amounted to victimisation, the approval was refused. Aggrieved by the same, the management is before this Court.

4. Even though I am in agreement with the learned Counsel for the petitioner management with reference to the fact that it is not victimisation, when the management leveled a charge that the workman is unauthorisedly absent, it is the primary onus on the management to let in such evidence to demonstrate that the workman was unauthorisedly absent for 8 days. In that view of the matter, no exception whatsoever can be taken to the finding of the first respondent regarding the same.

5. As a matter of fact, the respondent workman is present before this Court in person. Since the order refusing approval is only on a technical

¹ AIR 1978 SC 1004



W.P.No.32519 of 2024

WEB COPY

ground and since the workman is now sought to be reinstated into service pursuant to the technical ground, with reference to the back-wages, when this Court questioned the workman, he agreed that he will rejoin the duty without any back-wages.

6. In view thereof, this Writ Petition is disposed of on the following terms:-

(i) The order passed by the first respondent, dated 28.11.2023 made in A.P.No.120 of 2022 is upheld inasmuch as it refuses the approval;

(ii) The petitioner Corporation shall reinstate the respondent workman within a period of one week from the date of receipt of a copy of this order and the workman will be entitled to continue in his duty with continuity of service and all other service benefits;

(iii) However, the workman will not be entitled for back-wages alone. The workman will be entitled for wages from the date of his reinstatement if he is reinstated within a period of one week or if his reinstatement is delayed, he will be entitled for wages from today;

(iv) There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



W.P.No.32519 of 2024

27.11.2024

WEB COPY

Neutral Citation : no
grs

To

The Special Joint Commissioner of Labour,
DMS Complex, Teynampet,
Chennai - 600 006.



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D.BHARATHA CHAKRAVARTHY, J.

grs

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