



W.P.No.463 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.463 of 2022

and

WMP.Nos.514 of 2022 & 32686 of 2023

The Management of,
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. K.M.Rohit Kannaa

...Respondents

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.171 of 2013 dated 22.10.2021 on the file of the 1st respondent, Chennai - 6 and quash the same.

For Petitioner : Mr.R.Balaji

For Respondents : Mr.K.Surendran, APG, for R1
: No Appearance, for R2

ORDER



W.P.No.463 of 2022

WEB COPY

Though the Miscellaneous petition in WMP.No.32686 of 2023 filed seeking for an interim direction of this Court directing the 1st respondent therein to pay the salary to the petitioner therein has been listed today, in view of the consent expressed by the learned counsel on either side, the main Writ petition itself is taken up for final disposal.

2. The petitioner has come up with the Writ petition seeking quashment of the order of the 1st respondent dated 22.10.2021 made in A.P.No.171 of 2013.

3. The case of the petitioner is that the 2nd respondent/workmen was appointed as a Reserve Crew driver in the petitioner corporation and was posted at Ayanavaram Depot with effect from 03.09.2017 and he was subsequently regularised. While so, as the 2nd respondent was continuously absent from duty without any prior intimation which is a clear violation of Certified Standing orders of the petitioner corporation, the petitioner corporation issued a charge memo dated 31.01.2012, for which, though the 2nd respondent sent a reply on 19.03.2012, as the same was not satisfactory,



W.P.No.463 of 2022

WEB COPY

the petitioner corporation proceeded with enquiry proceedings and after conducting enquiry by affording appropriate opportunity, as the charges levelled against the 2nd respondent were proved, the petitioner corporation passed an order of dismissal against the 2nd respondent on 02.05.2013. Parallely, the petitioner corporation sought approval before the 1st respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947 and the same was taken up on file in A.P.No.171 of 2013. However, the 1st respondent rejected the said approval petition, vide present impugned order dated 22.10.2021. Challenging the same, the petitioner is before this Court.

4. Learned counsel for the petitioner corporation submitted that, the 1st respondent had rejected the approval petition on the ground that there was a delay of two months, which is not sustainable, since mere delay in filing the approval petition will not vitiate the entire proceedings, While so, rejecting the approval petition filed by the petitioner on the ground that, the same was not filed simultaneously before the authority is not sustainable, as the word simultaneous mentioned is not explained either in the Act or in the rules. Hence, the order of the 1st respondent is liable to be set aside and accordingly, prayed for appropriate orders.



W.P.No.463 of 2022

5. Per contra, the learned counsel appearing on behalf of the 1st respondent submitted that, though the 2nd respondent was dismissed from service on 02.05.2013, however, the petitioner corporation had filed the approval petition only on 15.07.2013 with a delay of about three months, which is an incurable defect as per the decision of the Hon'ble Division Bench of this Court in the case of ***The Management, Tamil Nadu State Transport Corporation (Salem) Limited Vs. C.Iyandhurai and anr.*** (W.A. No.1555 of 2022) dated 01.08.2022. For better appreciation, the relevant portion of the said order is extracted hereunder:

“The Writ Appeal has been filed against the order passed by the learned Single Judge refusing to interfere with the order passed by the second respondent-Authority in dismissing the appellant-Management's approval petition under Section 33(2)(b) of the Industrial Disputes Act, 1947. The rejection of the approval petition was on the ground that there was shortfall in payment of one month salary to the first respondent-employee and there was eight days delay in filing the approval petition. The learned Single Judge, while advertent to Section 33(2)(b) of the Industrial Disputes Act, 1947, read with Rule 64(2) of the Industrial Disputes Rules, 1958, observed that an application seeking approval of dismissal of an employee needs to be served with the order of



WEB COPY



W.P.No.463 of 2022

punishment and simultaneously, approval application has to be filed before the Authority, and otherwise, the approval petition cannot be entertained and hence, the learned Single Judge observed that the second respondent-authority rightly rejected the approval petition. In view of the above, the learned Single Judge, while not interfering with the order passed by the second respondent-authority in dismissing the approval petition, made it clear that the first respondent-employee would be entitled to all monetary benefits due to him and the appellant-Management was expected to extend the same and the period for compliance was also given by the learned Single Judge. Looking into the order passed by the learned Single Judge, we find no ground made out to entertain the Writ Appeal, which is accordingly dismissed. There shall be no order as to costs. Consequently, the miscellaneous petition is closed.”

6. Though the name of Mr.K.Thirumalai, learned counsel has been printed in the cause list on behalf of the 2nd respondent, none appeared on behalf of the 2nd respondent today. However, considering the period of pendency of this Writ petition, this Court is inclined to dispose of the same based on the materials available on record.



W.P.No.463 of 2022

WEB COIN

7. The ingredients which should be satisfied by the employer while filing the approval petition have been spelt out in the decision of the Apex Court in ***Lalla Ram Vs. D.C.M. Chemical Works Ltd. and Ors.***, reported in ***AIR 1978 SC 1004***, wherein the Supreme Court held thus :-

"(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 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."

8. From the materials available on record it is evident that the



W.P.No.463 of 2022

WEB COPY

approval petition was not filed simultaneously when the order of dismissal had come to be passed. It is even the admitted case of the petitioner that there is a delay of about three months. It is the consistent view of the courts that there should be proper explanation for the delay and in the absence of the same, even a single day's delay is fatal. Though in *Lalla Ram's* case, it has been held that reasonable delay, even then the reasonableness should be explained. However, in the case on hand, there is no explanation for the delay, much less any explanation, which is reasonable and in such a circumstances, the requirement of Section 33(2)(b) has not been fulfilled and, therefore, the same does not merit acceptance. Appreciating the materials in proper perspective, the Labour Court has rejected the approval petition, which cannot be said to be erroneous. Further, the decision of the Division Bench of this Court in *C.Iyandhurai* case (*supra*) is also in line with the decision of this Court.

9. For the reasons aforesaid, this Writ petition stands dismissed. No



W.P.No.463 of 2022

costs. Consequently, the connected miscellaneous petitions are closed.

WEB COPY

27.03.2025

skt

NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

1. The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
Teynampet, Chennai – 600 006.
2. The Management of,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai – 600 002.

M.DHANDAPANI, J.

8/9



WEB COPY



W.P.No.463 of 2022

skt

W.P.No.463 of 2022
and
WMP.Nos.514 of 2022 & 32686 of 2023

27.03.2025