

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.2338 of 2011
and
M.P.No.1 of 2014

V.S.Kuppan

... Petitioner

Vs

- 1.The Managing Director,
Metropolitan Transport Corporation,
Chennai-600 002.
- 2.The General Manager,
Metropolitan Transport Corporation,
Chennai Circle-2,
Ayanavaram,
Chennai-600 023.

... Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in the impugned orders in Memo No.6779/Sa.P (O.Na)1.1./MTC/98, dated 21.9.2010 of the 1st respondent and to quash the same, consequently to direct the respondents more particularly the 1st respondent to allow his appeal and to direct the 2nd respondent to reinstate the petitioner back in service within a reasonable time frame, with all attendant benefits, condoning the break in service between the period from 21.6.98 to date of reinstatement for all service (continuity in service) and for other pensionary benefits.

For Petitioner : Mr.A.L.Namasivayam

For respondents : Mr.P.Paramasivadoss

O R D E R

Heard Mr.A.L.Namasivayam, learned counsel for the petitioner and Mr.P.Paramasivadoss, learned counsel for the respondent.

2. The petitioner seeks for issuance of writ of certiorarified mandamus to quash the order dated 21.09.2010 passed by respondent No.1, dated 21.9.2010 and to direct respondent No.1 to allow the appeal and reinstate the petitioner in service with back wages and other benefits.

3. The petitioner was working as Conductor in the respondents Corporation and he was issued with a charge memo dated 15.07.1999 stating that he has failed to report for duty continuously. This charge memo is based on the report submitted by the Branch Manager, Ayanpuram Depot, dated 14.07.1998. The petitioner would state that he has submitted leave application along with medical certificate before he proceeded on leave from 21.06.1998 and the said aspect was not taken into consideration by respondent No.2 with a view to provide temporary appointments to Reserve Candidates, who are waiting and by suppressing his leave application, action has been taken. Further, with regard to the change of address, it is stated that the petitioner has already given intimation regarding change of address. It is submitted that till date the petitioner has not received any communication from respondent No.2 and the unserved cover itself shows lack of bonafides. It is stated that the so called in-house enquiry is a farce and no enquiry was conducted and the order of removal was an exparte order and it was not affixed in the Notice Board of the Depot. Further, the petitioner submits that he was not disbursed with the bonus that was due for the year 1997-1998, incentive bonus, leave salary amount etc. Further, it is stated that the Appellate Authority has also passed a non-speaking order.

4. On perusal of the facts and circumstances of the case and the material documents produced, essential the petitioner seeks to question his non-employment. The petitioner being the workman within the definition of "workman" as defined in the Industrial Disputes Act, 1947, should raise a dispute before the Labour Court. While raising the dispute before the Labour Court, it is always open to the petitioner to contend that he had exercised due care and diligence while working and he cannot be blamed for approaching the Court belatedly challenging the termination order for the reasons stated by him. It is also open to the respondents Management to raise all the contentions both legally and factually before the Labour Court. Accordingly, this Court holds that there would have been no necessity to set aside the impugned order, however, liberty is granted to the petitioner to raise a dispute before the Labour Court challenging his non-employment and if it is raised, the Labour Court is directed to consider the application on merits and in accordance with law.

5. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bbr

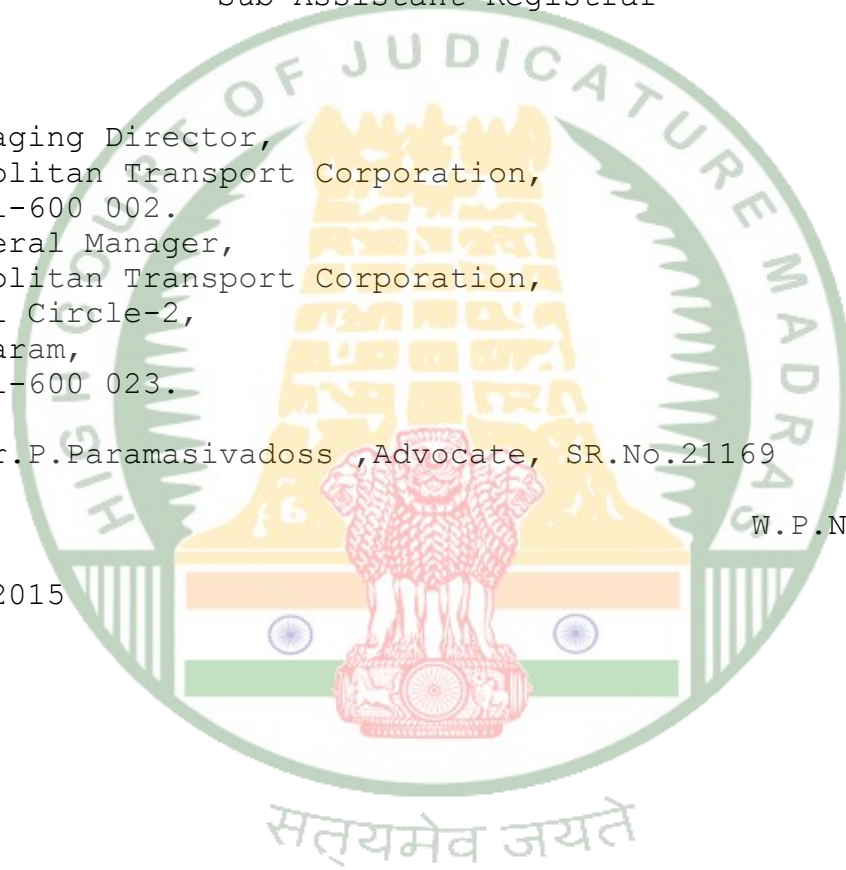
To

- 1.The Managing Director,
Metropolitan Transport Corporation,
Chennai-600 002.
- 2.The General Manager,
Metropolitan Transport Corporation,
Chennai Circle-2,
Ayanavaram,
Chennai-600 023.

1 cc to Mr.P.Paramasivadosh ,Advocate, SR.No.21169

W.P.No.2338 of 2011

bvr (co)
pmk.29.4.2015



WEB COPY