

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2016

Date of Reserving the Order	Date of Pronouncing the Order
16.02.2016	18 .02.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.Nos.27999 of 2013 & 1263 of 2014

W.P.No.27999 of 2013

S.Savithiri

.... Petitioner

Vs

1 The Presiding Officer,
II Addl., Labour Court,
City Civil Court Annexure Buildings,
Chennai - 600 104.

2.The Management,
Metropolitan Transport Corporation,
(Chennai) Ltd.,

Anna Salai,

Chennai - 600 002.

... Respondents

W.P.No.1263 of 2014

The Management,
Metropolitan Transport Corporation,
(Chennai) Ltd.,

Anna Salai,

Chennai - 600 002.

.... Petitioner

Vs

1 The Presiding Officer,
II Addl., Labour Court,
City Civil Court Annexure Buildings,
Chennai - 600 104.

2.Tmt.S.Savithiri

... Respondents

Prayer in W.P.No.27999 of 2013 :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the Award of the first respondent, dated 01.10.2012, in I.D.No.107 of 2009, quash the portion of Award, declining to grant the terminal benefits, such as pension, appointment on compassionate ground and backwages and other attendant benefits and consequently direct the second respondent to settle the terminal benefits, family pension along with backwages and other attendant benefits and to offer appointment on compassionate ground to the petitioner.

Prayer in W.P.No.1263 of 2014 :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records pertaining to the order dated 01.10.2012, made in I.D.No.107 of 2009, on the file of the first respondent herein and quash the same.

For petitioner ... Mr.ST.Varadarajulu

For Respondents ... Mr.M.Chidambaram for R2

C O M M O N O R D E R

Both these Writ Petitions are directed against the award passed by the II Additional Labour Court, Chennai in I.D.No.107 of 2009, dated 01.10.2012.

2. The petitioner in W.P.No.1263 of 2014 is the Management of the Metropolitan Transport Corporation (Chennai Limit) and the petitioner in W.P.No.27999 of 2013, is widow of the Workman, who raised the dispute and not being satisfied with the award passed by the Labour Court, has challenged the same. In this order, the Transport Corporation shall be referred to as the 'Management'.

3. The Workman was appointed as Driver by the Management on 10.01.1988 and he has completed more than 18 years of service and by order dated 30.05.2006, his services were terminated. The charge against the Workman was that he was a habitual absentee and irregular. The absence from duty with effect from 15.09.2005, lead to the order of termination. The Workman preferred a statutory appeal as against the order of termination, which was dismissed and after his demise, the Workman's spouse raised a dispute before the Labour Court, which was taken on file as I.D.No.107 of 2009. The Workman's wife examined herself as WW-1 and marked 17 documents as Exhibits W1 to Exhibits W17. There was no oral evidence on behalf of the

Management, but six documents were marked namely, Exhibits M1 to Exhibits M6.

4. The Labour Court framed two questions for consideration as to whether the termination from service was justified; and whether the second respondent/petitioner is entitled to receive the monetary benefits available to her husband. The Labour Court after considering the oral and documentary evidence recorded a factual finding that though the Workman did not submit his explanation to the charge memo, domestic enquiry was not conducted. Therefore, the Labour Court concluded that termination of service of the Workman without holding an enquiry for the charge of misconduct is not fair and proper and in violation of principles of natural justice. Therefore, the Labour Court held that the punishment against the Workman is liable to be set aside and accordingly, the order of termination dated 30.05.2016, was held to be invalid and set aside. While moulding the relief to be granted, the Labour Court held that since the Workman is no longer alive, award of compensation would meet ends of justice and awarded a sum of Rs.3,00,000/-. Challenging the said award, the Management has filed the Writ Petition in W.P.No.1263 of 2014 and challenging the award of the Labour Court granting only compensation, the Workman has filed the Writ Petition in W.P.No.27999 of 2013.

5. Heard the learned counsels appearing for the parties and perused the materials placed on record.

6. The undisputed fact is that the Workman had rendered 18 years of continuous service. Thus, had he been alive and not suffered any penalty, he would have retired from service and entitled to all pensionary benefits. Two unfortunate things happened namely, the Workman absented himself for quite a long period of time, which according to the Management is unauthorised absence. Consequently, he was terminated from service. Even before, he could challenge the order of termination before the Labour Court, he passed away. His young widow with two minor children challenged the order of termination before the Labour Court raising several grounds and marked documents to substantiate that the absence of the Workman from service was not as the case of unauthorised absence, but on account of his medical condition. The medical certificate issued by the Department of Psychiatric, Chennai Medical College and Research Institute, Government Medical College, Chennai, reveals that the Workman was under treatment from 23.05.2006 and for poronnel sehizophrenia and that he has improved well and fit to join duty with a recommendation that he should be given light duty, this certificate is dated 14.08.2006. Though this certificate was marked before the Labour Court, as Exhibit W-12, the Labour Court has not made any specific reference to it. However, the Labour Court on analysis of the documents placed by

the Management, namely Exhibits M2 and M4, recorded a clear finding that the termination of the Workman from service without enquiry was bad in law. The Labour Court then proceeded to hold that the punishment awarded is liable to be set aside and the order of termination dated 30.05.2006, was held to be not valid and was set aside. Thus, the consequence that had to follow was an award of reinstatement with continuity of service, attendant benefits and full or partial backwages or if the Labour Court wanted to exercise discretion under Section 11A of the I.D.Act, it could have done.

7. However, the Labour Court in the impugned award did neither of the above two, but held that the Workman's spouse will be entitled to receive Rs.3,00,000/- as full and final settlement. The conclusion arrived at by the Labour Court in paragraphs 14 and 15 of the award is utterly perverse and has been rendered without properly appreciating the oral and documentary evidence, especially when the Labour Court set aside the order of termination. There should have been an endeavour by the Labour Court to assess as to why the Workman did not report for duty. Exhibits W2 and W12, which are the copies of the medical certificates issued by the Government General Hospital clearly shows that the Workman was under Psychiatric help and the Doctor certified on 14.08.2006, he is fit to resume duty, but he should be given light work. However, the Labour Court did not make any endeavour in this direction.

8. The Management in their Writ Petition have contended that when the process was going on for conducting domestic enquiry, Workman died all of sudden on 15.09.2006. However, it has to be mentioned that the order of termination was passed on 30.05.2006 and if at all, any steps to conduct domestic enquiry should have been initiated prior to that. Therefore, the ground raised by the Management is absolutely untenable. The Workman having been imposed with the major penalty of termination from service and he being a permanent employee of the Management having completed 18 years of service, could not have been terminated, without conducting domestic enquiry, even though the Workman did not submit any explanation.

9. In the light of the above, the findings recorded by the Labour Court insofar as the grant of compensation of Rs.3,00,000/- as full and final settlement is held to be an incorrect finding rendered without proper appreciation of the oral and documentary evidence and inconsistent with the other findings rendered by the Labour Court in particular in paragraphs 10 to 13 of the award, which were fully in favour of the Workman as the Labour Court set aside the order of termination. Hence, the findings rendered by the Labour Court in paragraphs 14 & 15 of the award are held to be perverse and in respect of the other finding holding that the order of

termination is bad in law, is upheld.

10. In the result, the Writ Petition filed by the Management in W.P.No.1263 of 2014, is dismissed and the Writ Petition filed by the Workman's spouse in W.P.No.27999 of 2013, is allowed and accordingly, there will be a direction to the Management to notionally reinstate the Workman in service, calculate all monetary benefits payable to him and the pensionary benefits which would accrue to his spouse, (the petitioner in W.P.No.2799 of 2013) and all other service benefits including the right to get compassionate appointment for one of the children of the Workman and it is stated that Workman's son is aged about 24 years as of now. It is made clear that compassionate appointment should be offered to the Workman's son and it should not be rejected on any technical grounds stating that the son was a minor, when the Workman died. The above directions issued to the Management, shall be complied with, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1 The Presiding Officer,
II Addl., Labour Court,
City Civil Court Annexure Buildings,
Chennai - 600 104.

2. The Management,
Metropolitan Transport Corporation,
(Chennai) Ltd.,

Anna Salai,
Chennai - 600 002.

+1 cc to Mr.M.Chidambaram Advocate sr.10488/16
+1 cc to Mr.S.T.Varadarajulu, Advocate sr.10598/16

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aa09/03/2016