

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. Nos. 18058, 18301 & 31205 of 2015

&

M.P. No. 1 of 2015

W.P. No. 18058 of 2015

K. Alfred

...Petitioner

Vs.

The Management of
Metropolitan Transport Corporation
(M.T.C.), rep. by its
Managing Director,
Pallavan Salai,
Chennai -2.

...Respondent

Prayer: Petition under Article 226 of the Constitution of India
praying for issue of a Writ of Mandamus to direct the respondent
to consider the petitioner representation dated 15.05.2015 to
survive and for his children education within 10 days from the
date of order.

For Petitioner :: Mr.K. Alfred
Party-in-person

For Respondent :: Mr.P. Paramasivadoss

W.P. No. 18301 of 2015

K. Alfred

..Petitioner

Vs.

1. The Management of
Metropolitan Transport Corporation
(M.T.C.), rep. by its
Managing Director,
Pallavan Salai,
Chennai -2.

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2. The Presiding Officer,
1st Additional Labour Court,
Chennai - 600 104.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records from the 2nd respondent connected with the award of the I Additional Labour Court, Chennai, in I.D. No. 289/2011 dated 11.09.2013 insofar as it has denied backwages with continuity of service, reinstatement and retirement benefits and quash the same.

For Petitioner :: Mr.K. Alfred

Party-in-person

For Respondents:: Mr.P. Paramasivadoss

for R1

R2- Court

W.P. No. 31205 of 2015

The Management of
Metropolitan Transport Corporation

(M.T.C.), rep. by its

Managing Director,

Pallavan Salai,

Chennai -2.

..Petitioner

Vs.

1. K. Alfresh

2. The Presiding Officer,
I Additional Labour Court,
Chennai.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records of the 2nd respondent in I.D. No. 289 of 2011 dated 11.09.2013 and quash the award passed in I.D. No. 289 of 2011 dated 11.09.2013 as illegal.

For Petitioner :: Mr.P. Paramasivadoss

For Respondents:: K. Alfred

Party-in-person for R1

R2-Court

COMMON ORDER

Aggrieved over the award dated 11.09.2013 passed by the I Additional Labour Court, Chennai, in I.D. No. 289 of 2011, the workman as well as the Management have come before this Court by filing W.P. Nos. 18301 & 31205 of 2015. The workman has also

filed another writ petition, namely, W.P. No. 18058 of 2015 seeking a mandamus to the respondent Transport Corporation to consider his representation dated 15.05.2015.

2. For the sake of convenience, the parties are referred to in the same rank as shown in the cause title in W.P. No. 18301 of 2015 filed by the workman.

3. The petitioner was appointed as a Driver in the 1st respondent Management on 21.04.1981. On certain allegations, after holding an enquiry, the petitioner was terminated from service on 05.09.1986. Challenging the same, the petitioner raised an industrial dispute in I.D. No. 865 of 1989 before the Principal Labour Court, Chennai, and by award dated 10.12.1991, the industrial dispute was allowed directing reinstatement of the petitioner without backwages, but with attendant benefits and continuity of service.

4. Pursuant to the award of the Labour Court, the petitioner was reinstated in service by proceedings dated 18.04.1992 and was directed to report for duty at Vadapalani Bus Depot. Accordingly, the petitioner reported for duty on 20.04.1992 at Vadapalani Bus Depot. Subsequently, the petitioner was suspended from service with effect from 31.7.1992 and a charge memo was issued to the petitioner on 05.08.1992 alleging insubordination and wilful disobedience. The petitioner submitted his explanation on 10.09.1992. While so, without prejudice to the disciplinary proceedings initiated against the petitioner, the suspension order was revoked and the petitioner was asked to report for duty at Ayanavaram Bus Depot by order of the respondent Transport Management 21.09.1992. Since the petitioner could not join duty immediately, he sent a letter dated 26.09.1992 to the Branch Manager, Ayanavaram Depot to sanction him leave till 31.10.1992 along with his leave letter. However, a letter dated 11.06.1993 was sent by the respondent Management stating that the petitioner has been absent for more than 8 days without leave and asked him to submit his explanation, as otherwise, he will be deemed to have left the service as per clause 11(c) of the Certified Standing Orders. Even though the petitioner submitted his explanation on 24.06.1993, the respondent Management removed the petitioner from service by order dated 03.12.1993.

5. In the meanwhile, aggrieved over non-grant of backwages, the petitioner had filed W.P. No 10637 of 1992 and this Court, by order dated 23.12.1998 modified the award passed by the Labour Court and directed the respondent Management to award 75% backwages to the petitioner and the Writ Appeal filed in W.A. No. 1022/2001 by the Management as against the said order, was dismissed on 22.03.2006. The Management deposited 75%

of the backwages, in compliance, and the amount is also said to have been paid to the petitioner.

6. After 18 years from the date of removal, namely, 03.12.1993, the petitioner filed a petition before the Labour Officer (2), Kuralagam, Chennai - 108 for conciliation on 25.10.2010. After conciliation, the Labour Officer filed a failure report on 23.03.2011. The petitioner, thereafter, filed a claim petition in I.D. No. 289 of 2011 on 04.11.2011 before the I Additional Labour Court, Chennai, seeking to set aside the order of termination dated 03.12.1993 and to direct the respondent Management to reinstate him in service with full backwages, continuity of service and all other service benefits. The said claim petition was disposed of by the Labour Court, by award dated 11.09.2013 holding that the termination of the petitioner from service is in violation of Section 25F of Industrial Disputes Act, 1947, directed the respondent Management to pay a sum of Rs.2 lakhs as compensation to the petitioner in lieu of reinstatement as the petitioner had filed the I.D. after the lapse of nearly 18 years. Challenging the said award, the petitioner has filed W.P. No. 18301 of 2015 praying to set aside the award of the I Additional Labour Court, Chennai, in I.D. No. 289/2011 insofar as it has denied backwages with continuity of service, reinstatement and retirement benefits whereas the respondent Management has filed W.P. No. 31205 of 2015 seeking to quash the award directing payment of Rs.2 lakhs in lieu of reinstatement.

7. Besides, the petitioner, giving the details of the above development, made a representation on 15.05.2015 to the respondent Management requesting for payment of Rs.2 lakhs, as awarded by the Labour Court as well as retirement benefits. The said representation was not disposed of. Therefore, W.P. No. 18058 of 2015 has been filed by the petitioner seeking a Writ of Mandamus directing the respondent Management to consider and pass orders on his representation dated 15.05.2015.

8. Heard the petitioner, appearing as party in person and Mr.P. Paramasivadosh, learned counsel appearing for the 1st respondent Management.

9. As far as W.P. No. 18058 of 2015 is concerned, the petitioner only seeks disposal of his representation dated 15.05.2015. Since the main issue to be decided forms the subject matter of the other two writ petitions, the question of directing the respondent Management to consider the petitioner's representation does not arise. Therefore, the said writ petition is liable to be dismissed.

10. Though the petitioner, in paragraph Nos. 20 and 21 of the affidavit filed in support of the above writ petition, has made contemptuous allegations against Subordinate Judicial Officers as well as Judges of this Court, considering the mindset of a person, who has been out of service for the past 18 years, this Court is not taking a serious view in this regard.

11. Now, coming to the main issue, it is an admitted fact that the petitioner was appointed as a Driver on 21.04.1981; terminated on 05.09.1986 and thereafter, reinstated on 18.04.1992 pursuant to the award passed by the Principal Labour Court, Chennai, in I.D. No. 865 of 1989. Though the petitioner was suspended on 31.07.1992 and a charge memo was issued to the petitioner on 05.08.1992 alleging insubordination and wilful disobedience. The petitioner submitted his explanation on 10.09.1992 and without prejudice to the disciplinary proceedings initiated against the petitioner, the suspension order was revoked and the petitioner was asked to report for duty at Ayanavaram Bus Depot by order of the respondent Management 21.09.1992. But, he failed to report duty stating family problems. As the petitioner did not report for duty for more than 8 days, the respondent Management issued a show cause notice on 11.06.1993 and the petitioner submitted his explanation on 24.06.1993. Since the explanation submitted by the petitioner was not satisfactory, the petitioner was removed from service on 03.12.1993.

12. Further, it is true that the petitioner, after a lapse of 18 years, had raised the industrial dispute. However, the Labour Court, taking into consideration, non-holding of enquiry after issuing show cause notice on 11.06.1993 and submission of explanation by the petitioner on 24.06.1993, held that the termination order is in violation of Section 25F of I.D. Act, 1947 relying upon the judgment of the Full Bench of the Honourable Supreme Court rendered in D.K. Yadav V. J.M.A. Industries Limited reported in 1993 III SCC 253 and the judgment of this Court in rendered in Management of K.S.B. Pumps Limited, Coimbatore and another V. Presiding Officer, Labour Court, Coimbatore and Others reported in 2012 4 LLJ 703. Eventhough the industrial dispute was raised after 18 years of service, taking into consideration the violation of mandatory provision, namely, Section 25F of I.D. Act, 1947, the Labour Court was right in setting aside the order of removal from service. Therefore, the order passed by the Labour Court in this regard is justified.

13. Usually, Courts would order reinstatement with full backwages with all attendant benefits and continuity of service, if the order of termination is set aside as illegal. However, considering the termination of the petitioner from service on

03.12.1993 and the petitioner moving the Conciliation Officer only on 25.10.2010 and filing the industrial dispute subsequently on 04.11.2011, nearly after 18 years and also the fact that the petitioner was aged about 56 years on the date of passing of the award, on 11.09.2013 and further that the petitioner had not properly explained there was a family problem, either orally or by producing documents, due to which there was delay in raising the industrial dispute, the Labour Court, instead of ordering reinstatement, directed the Management to pay compensation of Rs. 2 lakhs. Though decision of the Labour Court is based on cumulative consideration of all material points, awarding of compensation in lieu of reinstatement to the tune of Rs.2 lakhs is inadequate. It is, in fact, true that the petitioner has belatedly filed the industrial dispute. However, the sum of Rs.2 lakhs awarded as compensation does not seem to be appropriate and reasonable. When Courts decide to award compensation, in lieu of reinstatement, the amount awarded should be fair and reasonable. Hence, in an endeavour to do complete justice, this Court enhances the compensation awarded by the Labour Court from Rs.2 lakhs to Rs.5 lakhs.

14. In fine, the award of the Labour Court is confirmed except enhancing the compensation payable from Rs.2 lakhs to Rs.5 lakhs. W.P. No. 18058 of 2015 filed by the petitioner and W.P. No. 31025 of 2015 filed by the Management are dismissed. W.P. No. 18301 of 2015 stands disposed of. No costs. Connected M.P. is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Management of
Metropolitan Transport Corporation
(M.T.C.), rep. by its
Managing Director,
Pallavan Salai,
Chennai -2.

2. The Presiding Officer,
I Additional Labour Court, Chennai.

+ 2 ccs to Mr.K. Alfred, Advocate SR.52278

+ 2 ccs to Mr.P. Paramasivadoss, Advocate Sr.52458, 52459
(31.08.17)

W.P. Nos.18058, 18301 &
31205 of 2015

SCD(CO)
Eu 3.08.17



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