

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.Nos.1735 & 1736 of 2014

The Management of Metropolitan
Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai - 600 002.
Rep., by its Deputy Manager

.. Petitioner in
both W.Ps.

Vs

1. The Special Deputy Commissioner of
Labour, D.M.S. Compound,
Chennai.

.. 1st Respondent
in both W.Ps.

2. G.Punniyakodi

.. 2nd Respondent
in W.P.1735/2014

3. D.Kubendiran

.. 2nd Respondent
in W.P.1736/2014

Writ petitions filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records of the order passed by the first respondent in Approval Petitions in A.P.Nos.527/2011 and 548/2011 dated 22.07.2013 and to quash the same as illegal.

For Petitioner .. Mr.P.Paramasiva Doss
in both W.Ps.

For Respondents .. Mr.R.A.S.Senthilvel,
in both W.Ps. Addl. Govt. Pleader for R1

Mr.S.T.Varadarajulu for R2

COMMON ORDER

By consent of the learned counsel on either side, the writ petitions themselves are taken up for disposal.

2. The orders of dismissal were passed by the writ petitioner against the second respondents for unauthorised absence for eight days. Charges have been framed and the second respondents were put through domestic enquiry. The enquiry officer gave a report holding that the charges are proved. Thereafter, the second respondents were asked to show cause and on receipt of reply, orders of dismissal were passed. The approval petitions were rejected on the ground that the enquiry was not conducted in a fair and free manner and the charges are not proved. There is no bona fide in the punishment imposed and the mandatory payment of one month salary was not made.

3. As these findings have been rendered based upon the records and facts, this Court does not find any merit in these writ petitions. However, learned counsel appearing for the petitioner would submit that considering the facts of the case, the order will have to be modified with respect to the backwages.

4. Learned counsel appearing for the second respondents would submit that the second respondents would agree for deduction of 50% of backwages subject to the condition that there should be continuity of service.

5. On a perusal of the orders passed by the first respondent, this Court does not find any perversity, warranting interference. However, considering the facts of the case and taking note of the further fact that the orders were passed by the first respondent as early as 22.07.2013, this Court is of the view that it would suffice if the backwages is reduced to 25%. Even in a case, challenging the dismissal before the Industrial Tribunal, there is no automatic backwages. It depends upon the facts and circumstances of each case. Therefore, this Court, while confirming the orders passed by the first respondent insofar as rejection of approval petitions are concerned, is inclined to modify the orders of dismissal. Accordingly, the orders of dismissal are modified to the extent that the second respondents are entitled for 25% of the backwages. Apart from other benefits, the arrears will have to be paid within a period of six weeks from the date of receipt of a copy of this order. Insofar as the provident fund contribution is concerned, it is fairly submitted by the learned counsel that out of 25% of the backwages, the same can be adjusted towards the provident fund contribution, otherwise payable by the second respondent.

6. Learned counsel appearing for the petitioner seeks eight weeks' time to implement the order. Accordingly, the petitioner is given eight weeks' time from the date of receipt of a copy of this order to implement the order. The writ petitions are disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

raa

To

The Special Deputy Commissioner of
Labour, D.M.S. Compound,
Chennai-18.

+2ccs to Mr.S.T.Varadarajulu, Advocate, S.R.No.44436

W.P.Nos.1735 & 1736 of 2014

CS/19/07/17



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