

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 06.12.2017

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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.Nos.12989 and 12990 of 2010
& MP Nos.1 & 1 of 2010

J.Andreus Bakkiyaraj

.. Petitioner in
both writ petitions

versus

1. The Presiding Officer,
I Additional Labour Court,
Chennai. 1st Respondent in WP.12989/2010

2. The Management of 2nd Respondent in WP.No.12989/2010 and
Metropolitan Transport Corporation Ltd.,
(through the Branch Manager),
Perambur Depot,
Chennai-600 002. .. Sole respondent in WP.12990/2010

Prayer in W.P.No.12989 of 2010: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the award dated 30.11.2007 passed by the first respondent in I.D.No.214/2004, quash the same insofar as depriving the petitioner backwages and direct the second respondent to pay him back wages for the period from 29.8.1998 to the date of award, namely, 30.11.2007 apart from the relief reinstatement with continuity of service and all other attendant benefits already granted by the first respondent award costs.

Prayer in W.P.No.12990 of 2010: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the respondents to implement the award dated 30.11.2007 passed by the I Additional Labour Court, Chennai in I.D.No.214/2004 by reinstating the petitioner into their service with continuity of service and all other attendant benefits including wages from the date of award till petitioner is reinstated award costs.

For Petitioner : Mr.V.Ajoy Khose
both Wps.

For Respondents: Mr.P.Paramasivadas for R2 in WP
both Wps. 12989/2010 and for R1 in WP.12990/2010
R1 Court in WP.No.12989/2010

COMMON ORDER

The petitioner has approached this Court, seeking the following reliefs:

"W.P.No.12989 of 2010:

To issue Writ of Certiorarified Mandamus, to call for the records pertaining to the award dtd 20.11.2007 passed by the first respondent in I.D.No.214/2004, quash the same insofar as depriving the petitioner backwages and direct the second respondent to pay him back wages for the period from 29.8.1998 to the date of award, namely, 30.11.2007 apart from the relief reinstatement with continuity of service and all other attendant benefits already granted by the first respondent.

"W.P.No.12990 of 2010:

To issue Writ of Mandamus, to direct the respondents to implement the award dated 30.11.2007 passed by the I Additional Labour Court, Chennai in I.D.No.214/2004 by reinstating the petitioner into their service with continuity of service and all other attendant benefits including wages from the date of award till petitioner is reinstated."

Since the facts and issues involved in these writ petitions are common, they are taken up together and being disposed of by this common order.

The petitioner was an employee of the second respondent Corporation. He was originally employed as a Driver on 11.8.1981 and became permanent and brought on regular time scale of pay in August, 1982. According to the petitioner, during August, 1998, he had suffered from Asthama ailment, due to which, he was unable to work for some time. He applied leave and the same was conveyed through his co-employee. While so, a charge memo was issued on 18.11.1998 for his unauthorized absence for more than 10 days from 29.8.1998. An enquiry was ordered and in the enquiry, the petitioner participated and stated that a medical certificate was forwarded through his co-employee. However, on the basis of the report of the Branch Manager, without examining any witnesses on the side of the management, a report was submitted on 27.5.1999 holding the charges were proved. Thereafter, a show cause notice was issued

on 14.6.1999 proposing to impose a penalty of removal from service. Finally, an order was passed by the second respondent on 26.6.1999 removing the petitioner from service with effect from 29.8.1998. The petitioner had raised an industrial dispute under the provisions of the Industrial Disputes Act and it came up for consideration before the first respondent Labour Court in I.D.No.214 of 2004. After examination of the witnesses both the petitioner and the management, the first respondent Labour Court had passed an award, setting aside the punishment of removal from service and directed the second respondent to reinstate him into service with continuity of service and with all other attendant benefits, however, without backages. The first respondent Labour Court has concluded that the enquiry conducted against the employee was not fair and proper and even otherwise, the order from removal is not warranted at all in the circumstances of the case.

According to the petitioner, against the award of the Labour Court, no appeal has been filed by the management and therefore, the petitioner filed W.P.No.12990 of 2010, praying to implement the award dated 30.11.2007 passed by the Labour Court in I.D.No.214 of 2004. As far as the other writ petition is concerned, namely, W.P.No.12989 of 2010, the petitioner workman has challenged the award insofar as it denied the back wages to him by the first respondent Labour Court.

Shri Ajoy Khose, learned counsel appearing for the petitioner workman would submit that till date no appeal has been filed and therefore, the award dated 30.11.2007 passed in I.D.No.214 of 2004 has become final. During the pendency of the writ petition, the petitioner had also attained the age of superannuation. During the course of arguments, it was represented on behalf of the petitioner that he would not press the writ petition, i.e. W.P.No.12989 of 2010, which was filed challenging the award of the Labour Court insofar as it denied the back wages for the period of non-employment if the second respondent management is directed to make PF contribution as admissible and payable to the petitioner for the subject period of non-employment and also till the date the petitioner had attained the age of superannuation. He would pray that the award of the Labour Court may be modified to that effect and both the writ petitions can be disposed on the above terms.

On the other hand, Mr.Parmasivadas, learned counsel appearing for the respondent Corporation would submit that the management did not challenge the award. But he would submit that the question of grant of back wages does not arise in this case since the petitioner was absent unauthorizedly and such unauthorized absence was an act of serious misconduct in terms of standing orders of the Corporation. Since the learned counsel for the petitioner has fairly suggested that in case his PF contribution as admissible and payable to him is accorded, the claim for back wages would be waived correspondingly, the learned counsel for the second respondent cannot have a valid

objection to the suggestion put forth by the learned counsel for the petitioner. Although the learned counsel for the second respondent Corporation expressed certain reservation on that, but ultimately, this Court is of the considered view that the entire issue can be given a quietus in view of the fact that the petitioner is no more in service since retired during the pendency of the writ petitions.

In the light of the above discussion and narrative, this Court dismissed the writ petition in W.P.No.12989 of 2010, challenging the award dated 30.11.2007 in I.D.No.214 of 2004 insofar as it denied the backwages to the petitioner/workman. The other writ petition in W.P.No.12990 of 2010 is allowed subject to modification of the award that the second respondent management is directed to make PF contribution as admissible to the petitioner for the subject period and till the date of his attaining the age of superannuation and settle all the terminable benefits including consequential benefits arising thereof. The order shall be passed in compliance with the direction of this Court, by the second respondent Corporation within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are closed.

/sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

suk

To

1 The Presiding Officer,
1 Additional Labour Court, Chennai

2 The Branch Manager Management of
Metropolitan Transport Corporation Ltd.,
Perambur Depot,
Chennai-600 002

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W.P.Nos.12989 & 12990 of 2006

MK : 16/02/2018