

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2017

CORAM

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

W.P.No.27479 of 2016

and

W.M.P.Nos.23675 and 23676 of 2016 and
15494 and 15495 of 2017

The Management of Metropolitan
Transport Corporation (Chennai)
Ltd., Pallavan Illam, Anna Salai,
Chennai - 2.

... Petitioner

Vs

1.The Special Deputy Commissioner of
Labour under Section 33(2) (B)
of the Industrial Disputes Act, 1947
Chennai.

2.S.Senthilkumar

... Respondents

Writ petition 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 Petition in A.P.No.160/2013 dated 31.10.2013 and to quash the same as illegal.

For Petitioner	..	Mr.P.Paramasiva Doss
For Respondents	..	Mr.R.A.S.Senthilvel,
		Addl. Govt. Pleader for R1
		Mr.S.T.Varadarajulu for R2

ORDER

Though the miscellaneous petitions are listed for hearing, with the consent of the learned counsel on either side, the writ petition is taken up for disposal.

2.The order of dismissal was passed by the writ petitioner against the second respondent for unauthorised absence for eight days. Charges have been framed and the second respondent was put through domestic enquiry. The enquiry officer gave a report holding that the charges are proved. Thereafter, the second respondent was asked to show cause and on receipt of reply, an order of dismissal was passed. The approval petition was 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 this writ petition. 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 respondent would submit that the second respondent 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 order 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 order was passed by the first respondent as early as 31.10.2013, this Court is of the view that it would be sufficient 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 order passed by the first respondent sofar as rejection of approval petition is concerned, is inclined to modify the order of dismissal. Accordingly, the order of dismissal is modified to the extent that the second respondent is entitled for 25% of the backwages. Apart from the 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 petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

mmi
To

The Special Deputy Commissioner of
Labour under Section 33(2) (B)
of the Industrial Disputes Act, 1947,
Chennai.

+1 CC to Mr.S.T.Varadarajulu, Advocate sr 44438
+1 CC to Govt. Pleader sr 44499
+1 CC to Mr.P. Paramasivadoss, Advocate sr 44916

W.P.No.27479 of 2016

SP(11/07/2017)

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