

IN THE HIGH COURT OF MADRAS

DATED : 11.09.2017

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.1146 of 2017
and
C.M.P.No.16038 of 2017

The Management
Rep. by its Senior Deputy Manager (HRD)
Metropolitan Transport Corporation
Pallavan Salai
Chennai - 600 002

... Appellant

Vs.

1. Thiru.P.Krishnan
2. The Presiding Officer
II Additional Labour Court
City Civil Court Annexe Buildings
High Court Compound
Chennai - 600 104

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 28.03.2017 made in M.P. No.14649 of 2016
in W.P.No.27625 of 2014.

W.M.P.No.14649 of 2016 : Petition praying that in these
circumstances stated therein and in the respective affidavits
filed therewith the High Court will be pleased to vacate the
stay granted in M.P.No.1 of 2014 in W.P.No.27625 of 2014 on
01.10.2015 (in W.M.P.No.14649 of 2016) pending disposal of the
above W.P.No.27625 of 2014.

W.P.No.27625 of 2014 : Petition praying to issue a Writ of
Certiorari or any other appropriate Writ, order or direction of
like nature calling for the records pertaining to the order
passed in C.P.No.24 of 2011 dated 05.04.2014 on the files of the
2nd Respondent herein and quash the same.

For Appellant : Mr.M.Chidambaram

JUDGMENT
(Made by S.Manikumar, J.)

Challenge in this appeal is, to an order made in M.P. No.14649 of 2016 in W.P. No.27625 of 2014 dated 28.03.2017, by which, the Writ Court, directed the appellant, namely, the Management, represented by its Senior Deputy Manager (HRD), Metropolitan Transport Corporation, to pay 50% of the amount, ordered by the learned Presiding Officer, II Additional Labour Court, Chennai, in favour of the first respondent, within a period of eight weeks from the date of receipt of the order. Writ court, further directed that on payment of the same, interim order of stay granted would be made absolute, and M.P. No.1 of 2015 and M.P. No.14649 of 2016, be disposed of, accordingly.

2. Material record discloses that the first respondent herein, conductor of Metropolitan Transport Corporation, Pallavan Salai, Chennai, has been issued with the following charges:

(a) That the 1st respondent Thiru.P.Krishnan, Ex-Conductor, Staff No.12503 had kept resold ticket for a value of Rs.2 x 3 with an intention to re-sale the same which is misconduct under Sec.25 (XL iii) of the Certified Standing Order.

(b) That the 1st Respondent had suo-motu mentioned Rs.115.50 in the TR as his own cash after having signed it by the Controller which is a misconduct under Sec.25 (XXIX)(C) of the Certified Standing Order.

(c) That the petitioner had kept shortage of Rs.121/- in his cash bag which is misconduct under Sec.25(XLI)(f) of the Certified Standing Order.

3. First respondent, workman, has submitted his explanation on 23.09.2005 denying all charges. A domestic enquiry has been conducted. According to the Management, charges were proved. Second show cause notice was issued. Further representation of the workman, did not contain valid or additional grounds. Therefore, the first respondent, was terminated from service on 16.07.2007.

4. According to the Management, instead of challenging the order of termination, before the appropriate forum, the first respondent/workman, has, straight away filed Claim Petition No.24/2011, before the learned Additional Labour Court, Chennai, claiming, a sum of Rs.6,29,379.70, being back-wages, bonus, exgratia, batta and earned leave, for the period of non-employment from September 2007 to December 2010. According to

the Management, there was no common dispute pending before the Commissioner of Labour, and therefore, there was no occasion to seek for approval.

5. On the above contentions, the learned Presiding Officer, II Additional Labour Court, Chennai, has passed an award dated 05.04.2014 in C.P. No.24/2011 directing the appellant herein, the Management, represented by its Senior Deputy Manager (HRD), Metropolitan Transport Corporation, to pay a sum of Rs.5,19,164/- to the first respondent herein/workman. Aggrieved by the award of the Labour Court, the Management, represented by its Senior Deputy Manager (HRD), Metropolitan Transport Corporation, has filed W.P. No.27625 of 2016.

6. Pending disposal of the writ petition, Management filed M.P. No.1 of 2014 in the said writ petition, for stay of the award in C.P. No.24 of 2011 dated 05.04.2014.

7. Initially, interim stay was granted on 17.10.2014. Thereafter, Management has filed M.P. No.1 of 2015, for extension of stay.

8. Seeking to vacate the stay, 1st respondent/workman has filed W.M.P. No.14649/2016. As the above miscellaneous petitions revolved around stay of the order made in C.P. No.24 of 2011 dated 05.04.2014, they were taken up together.

9. After hearing the learned counsel for the parties, at paragraph Nos.3 to 5, the writ court, vide common order dated 28.03.2017, has ordered as here under:

"3. The issues sought to be raised can only be decided while disposing the writ petition finally. At this stage, this court is required to pass an equitable order.

4. Admittedly, the first respondent in the writ petition has obtained an award in his favour from the Labour Court. Therefore, in the interest of justice, it would be just and appropriate to direct the writ petitioner to pay 50% of the amount ordered by respondent No.2 in favour of respondent No.1 in the writ petition within a period of eight weeks from the date of receipt of this order. On such compliance, the interim order of stay granted earlier is made absolute. Consequently, M.P. No.1 of 2015 and M.P. No.14649 of 2016 stand disposed of.

5. Considering the issues involved, the Registry is directed to post the writ petition for final hearing on 28.08.2017."

10. Assailing the correctness of the order made in W.M.P. No.14649/2016, made in W.P. No.27625 of 2014 dated 28.03.2017, instant writ appeal has been filed.

11. Though Mr.M.Chidambaram, learned counsel for the appellant, the Management, represented by its Senior Deputy Manager (HRD), Metropolitan Transport Corporation, reiterated, the averments made, in the writ petition, extracted supra and sought for reversal of the order, impugned before us, this court is not inclined to do so, for the reason that, even as per the submission of the learned counsel for the Management, no petition has been filed seeking approval of the termination of the first respondent. The Labour Court has upheld the claim of the respondent/workman. Submission is placed on record.

12. Mr.M.Chidambaram, learned counsel for the appellant, further submitted that the first respondent herein/workman, ought to have filed a petition under Section 33(A) of the Industrial Disputes Act, 1947. This court, is not inclined to subscribe to the said contentions, for the reasons that, on the facts and circumstances of the case, at this juncture, this court is called upon to decide only the correctness of the interim order, passed by the writ court.

13. Perusal of the order impugned before us also shows that the writ court has directed the Registry to post the writ petition for final hearing on 28.08.2017. Expediency has been shown by the writ court.

14. Considering the material on record, we are of the view that there is no need to interfere with the order, directing the appellant, the Management, represented by its Senior Deputy Manager (HRD), Metropolitan Transport Corporation, to pay 50% of the amount awarded by the Labour Court in the claim petition.

15. For the above said reasons, Writ Appeal is disposed of. Time is extended by eight weeks from today to make payment to the first respondent. No cost. Consequently, the connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

asr

To

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SAI (CO)
CA(23/10/2017)



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