

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.11801 of 2016

The Management
Metropolitan Transport Corporation
(Chennai) Ltd., Pallavan Illam
Anna Salai, Chennai 600 002.

.... Petitioner

Vs

1.K.Srinivasan

2.The Special Deputy Commissioner of Labour
D.M.S.Office, Teynampet, Chennai - 600 006.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari calling for the records pertaining to the order passed in A.P.No.425 of 2011 dated 23.05.2014 on the file of the second respondent and quash the same.

For Petitioner :Mr.M.Chidambaram

For Respondents:Mr.S.T.Varadharajulu - for R1

Mr.N.Srinivasan

Additional Govt.Pleader - for R2

O R D E R

The management has filed this writ petition, challenging the award of the labour court. The first respondent herein was a workman under the petitioner herein, having joined the services on 01.09.2009. It is the allegation of the petitioner that the first respondent was on unauthorised absence from 09.06.2010. A charge memo was issued on 05.07.2010, seeking explanation and as no explanation was submitted, domestic enquiry was conducted following the principles of natural justice.

2. With regard to the proposed punishment, second show cause notice was issued on 22.06.2011 and he was terminated from service from 28.10.2011. The management filed an approval petition in A.P.No.425 of 2011 before the labour Court. The labour court, accepted the fact that there was a fair and proper enquiry but with regard to payment of wages, there is a finding that payment that there is deficit in the payment of one month wages and the labour court finally rejected the approval petition filed under Section 33 (27)(b) of the Industrial Disputes Act. Challenging the same, the present writ petition has been filed by the management.

2. It is the case of the learned counsel for the petitioner that the workman has violated the standing order under section 25(vi) and 25 (XLIII) and therefore, the termination is justified. This contention is incorrect as the approval petition has been dismissed on the ground of non payment of one month wages. Instead of paying Rs.8216/- the management has paid only Rs.5890/-. The labour court has given a finding that the act of the management in not providing one month complete wages is against Section 33 (2)(b). Therefore, the dismissal of the approval petition has to be upheld.

4. Considering the fact that the charge itself was pertaining to unauthorised absence, the labour court has rightly given a finding that the workman has to be reinstated without backwages.

5. Perusal of the records would go to show that wages payable under Section 17-B of the Industrial Disputes Act has not been paid. Once the management chooses to challenge the order of reinstatement by the labour court, the management is duty bound to pay the wages under Section 17-B till the conclusion of the writ petition. Therefore, the management / petitioner is directed to pay the Section 17-B wages from the date of filing of the writ petition till the date of reinstatement. The workman shall report for duty within a period of two weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is disposed of and the connected miscellaneous petition is closed. No costs.
kst

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Special Deputy Commissioner of Labour
D.M.S.Office, Teynampet, Chennai - 600 006.

2.The Management

Metropolitan Transport Corporation
(Chennai) Ltd., Pallavan Illam, Chennai-2.

+1cc to Mr.S.T.Varadharajulu, Advocate SR.NO.58997

+1cc to Government Pleader SR.NO.59284

+1cc to Mr.M.Chidambaram, Advocate SR.NO.58742

RK(co)

sm:17.9.2018

W.P.No.11801 of 2016