

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Second day of March Two Thousand Eighteen

PRESENT

THE HON`BLE MR.JUSTICE SATRUGHANA PUJAHARI

WMP No.31968 of 2017

in WP No.20927 of 2017

H.VAZEER, [PETITIONER]
DRIVER TOKEN NO.D51489,
NO48/U, AASARKHANA STREET,
ALANDUR, CHENNAI16

Vs

1 THE MANAGEMENT [RESPONDENTS]
METROPOLITAN TRANSPORT CORPORATION
(CHENNAI)LTD., PALLAVAN ILLAM ,
ANNA SALAI, CHENNAI 02

2 THE SPECIAL DEPUTY
COMMISSIONER OF LABOUR, D.M.S,COMPLEX,
IV FLOOR, TEYNAMPET, CHENNAI 06 ,

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Direct the 1st Respondent / Petitioner to pay last drawn wages of Rs.16,805/- to the Petitioner under Section 17-B of ID Act, pending WP.No.20927 of 2017.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.S.T.VARADARAJULU, Advocate for the petitioner and of M.CHIDAMBARAM Advocate for the 1st respondent and of MR.K.RAVIKUMAR ADDL.GOV.T.PLEADER for the 2nd respondent the court made the following order:-

It appears that the petitioner in this writ miscellaneous petition while working as a Driver under the first respondent/Transport Corporation/writ petitioner as permanent employee, domestic enquiry was initiated against him and in such domestic enquiry, as charge against him was proved, he was terminated from service and petition for approval of such termination was made before the 1st respondent authority vide Approval Petition No.75 of 2014. However, the same was rejected vide order dated 13.03.2017, which is under challenge in the writ

petition filed by Management, *inter alia* on the ground that such an impugned order of the authority was unjust, improper and unsustainable in the eye of law, being not a sound one and contrary to the facts on record. During pendency of the writ petition, the workman has filed this writ miscellaneous petition under Section 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") supported by an affidavit indicating therein that he is not employed in any establishment and he is not receiving any remuneration and as such, the writ petitioner be directed to comply with the provisions of Section 17-B of the Act.

2. During the course of hearing of the petition, it is submitted by the learned counsel for the petitioner that since the writ petitioner has been directed by the Special Deputy Commissioner of Labour/the second respondent to reinstate the workman with back wages, but, the same has been challenged in this writ petition, the Management is duty bound to comply with the mandate of Section 17-B of the Act. But without complying the same, the Management during the pendency of the writ petition issued him an order of reinstatement and reinstated him without back wages for which the workman has refused to join. Therefore, direction may be given to the Management to comply with the mandate of Section 17-B of the Act.

3. Learned counsel appearing for the first respondent in this writ miscellaneous petition, however, submits that the order of the second respondent impugned in the writ petition being perverse, inasmuch as, though, the workman had misconducted himself and the enquiry was conducted in a proper manner without violating the provisions in this regard as well as the principles of natural justice, but, in utter disregard to the same, the prayer made to approve the punishment of dismissal was refused. Therefore, the order of the second respondent in this writ miscellaneous petition impugned in the writ petition being devoid of merit, the petitioner is not liable to comply with the mandate of Section 17-B of the Act. However, in such premises, also taking a sympathetic approach, when the first respondent in the writ miscellaneous petition has reinstated him, still he has refused to avail of the said order, his claim under Section 17-B of the Act is devoid of merit and as such liable to be dismissed.

4. To appreciate the contentions raised with regard to the prayer made in this writ miscellaneous petition, it would be apposite to have a look at Section 17-B of the Act, which reads as thus:

"17-B. Payment of full wages to workman pending proceedings in higher courts. Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive

of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the court shall order that no wages shall be payable under this section for such period or part, as the case may be."

5. As it appears in this case that the order of the first respondent in writ petition in the Approval Petition in not confirming the order of termination, passing in a domestic enquiry has been challenged by the Management. In such premises, during the pendency of the same, the Management as such is duty bound to comply with Section 17-B of the Act, if the workman comes forward seeking such relief indicating that he is not employed and receiving any adequate remuneration from any establishment. For adjudication of such prayer, the only material point is that whether the workman is employed in any establishment and receiving adequate remuneration. The merit, of the impugned order cannot be gone into while adjudicating such a prayer under Section 17-B of the Act, inasmuch as the payment under Section 17-B of the Act is not dependent on the result of the order to be passed by the High Court or the Supreme Court, challenging such order of reinstatement. Therefore, I am unable to agree with the contentions of the learned counsel for the Management that since the award is perverse as in the domestic enquiry, the workman was given appropriate opportunity and an order of termination was passed, the first respondent was not correct in making the order refusing the approval and as such the petitioner in the writ petition having a very good case, on merit, need not to comply with Section 17-B of the Act. When the petitioner has come forward indicating by an affidavit that he is not employed in any establishment and not receiving any remuneration, which has not been disputed by the Management, the Management is duty bound to comply with mandate of Section 17-B of the Act. Now coming to the contention that since the workman has not availed of the order of reinstatement, he is not entitled to the benefit under Section 17-B of the Act. Such a contention of the Management to resist the prayer under Section 17-B in the facts and situation is also devoid of merit, inasmuch, the reinstatement was offered not in terms of the order impugned, but overreaching the order indicating therein that he is not entitled to the back wages after such reinstatement and also he is reinstated in a post with the wages at the time of termination, though the post presently saddle with payment of higher wages. Therefore, it can very well be said that no sincere effort was taken to reinstate the petitioner in terms of the direction made in the impugned order, which has been challenged and only to frustrate a petition under Section 17-B the Act, such an

order was passed.

6. Hence, the prayer made in this writ miscellaneous petition stands allowed with a direction to the first respondent/ Management to pay the petitioner back wages at the rate the wages drawn by him at the time of termination with all other attendant benefit from the date of award till February 2018, by the end of April 2013, by an Account Payee cheque or demand draft. So far as the wages from March 2018, onwards are concerned, the Management shall go on pay in the aforesaid rate to the petitioner by an Account Payee cheque or Demand Draft drawn in his name by 10th of every succeeding English calendar month during the pendency of the writ petition.

7. With the aforesaid order, the writ miscellaneous petition stands disposed of.

-sd/-

02/03/2018

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE MANAGEMENT
METROPOLITAN TRANSPORT CORPORATION
(CHENNAI)LTD., PALLAVAN ILLAM , ANNA SALAI,
CHENNAI 02

2 THE SPECIAL DEPUTY
COMMISSIONER OF LABOUR, D.M.S, COMPLEX, IV
FLOOR, TEYNAMPET, CHENNAI 06 ,

C.C. to M/S.S.T.VARADARAJULU Advocate SR.NO.2639

C.C. to MR.M.CHIDAMBARAM Advocate SR.NO. 2607

Order

in
WMP.31968/2017

in
WP.20927/2017

Date :02/03/2018

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