

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.14428 of 2016
and
W.M.P.No.12616 of 2016

The Management
Metropolitan Transport Corporation
(Chennai) Ltd., Chennai - 600 002. Petitioner

Vs

1. G.Muthukrishnan
2. The Presiding Officer
I Additional Labour Court
City Civil Court Annexe Building
High Court Compound, Chennai - 600 104. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari calling for the records relating to the order passed in I.D.No.13 of 2012 dated 20.11.2015 on the file of the second respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents : Mr.S.Ravi - for R1

O R D E R

This writ petition is filed by the management, challenging the award passed by the labour court directing the management to reinstate the workman along with 75% of the backwages. The brief facts leading to the filing of the writ petition is as follows.

2. The first respondent workman joined the services of the petitioner herein on 27.5.1958 as driver. On 05.06.2001, he was issued a show cause notice with the allegations that in an inebriated state, he trespassed into the office of the timekeeper and torn off the chart. Thereafter, a charge memo has been issued on 15.06.2001, followed by a domestic enquiry. The first respondent workman submitted an explanation, which was

not accepted by the management. That apart, the fact that the workman was punished by the management 37 times between 1985 to 2001 has also been considered by the management. Thereafter, the workman was terminated from the services on and from 07.12.2001. The workman challenged the order passed by the management by filing I.D.No.13 of 2012.

3. The first additional labour court passed an award dated 20.11.2015, giving a finding that the termination of the petitioner is liable to be set aside and that the punishment is disproportionate to the proved charges. While ordering reinstatement of the workman with continuity of service, 75% of the backwages was also ordered. This finding of the labour court is under challenge in the present writ petition.

3. Learned counsel appearing for the petitioner/management would submit that the fact that the workman had been punished 37 times itself would be an indication for the workman being disobedient to the orders of the superiors and therefore the punishment as ordered by the management should have been upheld by the labour court. It is also contended that the industrial dispute itself has been raised after a lapse of 11 years and in all fairness, the labour court should not have ordered backwages, while ordering reinstatement.

4. Learned counsel appearing for the second respondent / workman would submit that the charges levelled against the workman herein are very flimsy and it is not at all a matter in which domestic enquiry should have been ordered and in any event the punishment is disproportionate to the proved misconduct. It is also submitted by the learned counsel for the workman that the procedure adopted by the management in conducting the domestic enquiry itself was not fair and proper and the workman was not given sufficient opportunity to prove the charges.

5. A perusal of the order of the labour court would go to show that the labour court has considered the following issues.

1. Whether the evidence produced before the enquiry officer established the charges?
2. If so, whether the punishment of dismissal was proportionate to the proved misconduct?
3. If not, whether the petitioner (workman) is entitled to the reliefs as prayed for?

6. The charges levelled against the petitioner (workman) are as follows.

- On 5.6.2001, the workman who was in inebriated state attempted to assault the time keeper and tore up the timing chart and pushed down a chair.

- The workman indulged in these acts in the presence of passengers and caused obstruction to the discharge of duties.

After considering the evidence adduced before the enquiry officer, the labour court has given a finding that the acts allegedly committed by the workman are not so serious to the extent of inflicting a punishment of dismissal. There is also a finding that it is not the workman who torn off the timechart but it is only the general public who did the same.

7. The finding of the labour court that punishment of dismissal from service is unwarranted, appears to be correct in the light of the allegations levelled and the evidence adduced. Therefore, as rightly pointed out by the labour court, the punishment of dismissal has to be set aside and it is rightly set aside by the labour court. It is brought to the notice of this Court that the date of retirement of the workman is 30.05.2016. The remaining issue to be considered is only backwages.

8. The learned counsel for the petitioner / management contends that the workman is guilty of serious misconduct and that no backwages should be paid to him and therefore the benefit with regard to backwages is liable to be set aside.

9. As rightly stated by the labour court, the delay in the workman approaching the labour court would lead to the conclusion that he might have been gainfully employed elsewhere after the order of dismissal and he would have chosen to challenge the award thereafter to get the benefit of backwages. Therefore, this Court is the view that the portion of the award of the labour court with respect to the backwages from the date of dismissal from service ie., 07.12.2001 to the date of filing of the industrial dispute (I.D.No.13 of 2012) ie., 09.01.2012 is liable to be set aside. However, the workman would be entitled to the backwages from the date of filing of the industrial dispute ie., 09.01.2012 till the date of retirement viz., 30.05.2016 at the rate of 75% of backwages. With this modification, the writ petition stands disposed of. Consequently, connected W.M.P.No.12616 of 2016 is closed. No costs.

Sd/-

Assistant Registrar(Audit)

//True copy//

Sub Assistant Registrar

kst

To

1. The Presiding Officer
I Additional Labour Court
City Civil Court Annexe Building
High Court Compound, Chennai - 600 104.

+1cc to Mr.M. Chindambaram, Advocate SR.No.56670

+1cc to Mr.S.Ravi*, Advocate SR.No.56751

W.P.No.14428 of 2016

GMV (11/09/2018)



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