

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.3.2018

Delivered on: 22-03-2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.9361 of 2009

The Management of Metropolitan
Transport Corporation,
Pallavan House, Pallavan Salai,
Chennai-600 002. ... Petitioner

versus

1. The Presiding Officer,
1st Addl.Labour Court,
Chennai-600 104.

2. Thiru K.Veerasamy ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records of the first respondent made in I.D.No.375 of 2005 dated 28.09.2007 on the file of the first respondent and quash the same.

For Petitioner : Mrs.Rita Chandrasekaran

For Respondents: Mr.K.M.Ramesh for R2

सत्यमेव जयते
ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorari, to call for the records of the first respondent made in I.D.No.375 of 2005 dated 28.09.2007 on the file of the first respondent and quash the same.

2. The Management of Metropolitan Transport Corporation is the petitioner herein. The second respondent was employed as a Driver having joined the Corporation during 1998. The second

respondent employee remained absent for 8 days from 20.4.2002 without prior intimation or sanction of leave from competent authority. Therefore, he was issued with a charge memorandum. Earlier, the second respondent employee was summoned to appear before the Regional Medical Board to ascertain his physical fitness. But he failed to respond to the summons and did not appear before the Medical Board. In such circumstances, a charge memorandum was issued on 10.04.2003 and an enquiry was conducted into the charges.

3. According to the petitioner Corporation, the second respondent employee was given fair opportunity to participate in the enquiry and thereafter enquiry report was submitted holding that the charges were proved against the petitioner. In pursuance thereof, the second respondent came to be removed from service on 1.7.2004. Since a dispute was pending before the first respondent, an application was moved by the petitioner Management under Section 33(2)(b) of the Industrial Disputes Act seeking approval for removal of the second respondent employee from service. The said approval application filed by the Management came to be allowed by the Labour Court without prejudice to the right of the employee to raise an industrial dispute.

4. In the above circumstances, the second respondent employee raised industrial dispute and the same came to be referred for adjudication in ID No.375 of 2005 before the first respondent. The first respondent, after adverting to various materials and submissions of the parties, allowed the I.D. by its award dated 28.9.2007 directing the petitioner Management to reinstate the second respondent employee in a suitable post on par with the post of Driver with back wages, continuity of service and all other attendant benefits. The said award of the Labour Court is being assailed by the petitioner Management in this writ petition.

5. Mrs.Rita Chandrasekaran, learned counsel appearing for the petitioner Management would submit that the first respondent Labour Court having found that the enquiry conducted by the Corporation was fair and proper, yet finally allowed the ID and ordered reinstatement of the second respondent employee with full back wages and continuity of service. Once the Labour Court having given its finding that the enquiry was fair and proper for proved misconduct, the award of the Labour granting full benefit to the second respondent employee, is without any justification and the same cannot be countenanced in law.

6. The learned counsel would further submit that the conclusion by the Labour Court holding that the findings of the domestic enquiry were perverse and not supported by any material

was contrary to fact, but on the other hand, the findings in the domestic enquiry holding that the charges proved were fully supported by the evidence and in such circumstances, the award of the Labour Court cannot seek approval of this Court and same is liable to be interfered with.

7. Per contra, Mr.K.M.Ramesh, learned counsel appearing for the second respondent employee would submit that the first respondent Labour Court has given considered and sound reasons for coming to the conclusion that the domestic enquiry findings were invalid and perverse. This was on the basis of the admitted fact that the second respondent employee, while returning from duty to his house, the bus in which he was travelling, was met with an accident on 13.12.2002 and he sustained grievous injuries as the right hand of the second respondent employee had been broken and therefore, he was taking treatment as inpatient from 13.4.2002 to 2.5.2002. In support of the treatment given to the second respondent employee, Ex.M9 was marked before the Labour Court. He was inpatient and was taking treatment in Ramachandra Hospital at Porur. Since the second respondent employee was undergoing treatment from 13.4.2002 to 2.5.2002. The charge against the second respondent employee for unauthorized absence from 20.4.2002, was nothing but vindictive action and such action was not supported by any bona fide consideration in which the second respondent was placed during the relevant point of time. The learned counsel would draw the attention of this Court to the findings of the Labour Court in this regard holding that the domestic enquiry report was nothing but perverse. The findings of the Labour Court is extracted below:

"9. The charge is from 20.4.2002, the petitioner was absent from duty. The accident occurred on 13.4.2002. The petitioner was under treatment as inpatient from 13.4.2002 to 2.5.2002 as per Ex.M9. Therefore, for the charge of unauthorized absence, the petitioner was under treatment as inpatient in Ramachandra Hospital at Porur. When the petitioner was inpatient from 13.4.2002 to 2.5.2002 is evidenced by documents. But the learned Enquiry Officer has failed to note the above point, but has held that the charges levelled against the petitioner were proved. Therefore, the findings of the Enquiry Officer is not in accordance with evidence available with him. Further police FIR was also filed before the Enquiry Officer. Therefore, the findings of the Enquiry Officer that the charges levelled against the petitioner were proved

is not in conformity with the evidence available with him. Therefore, the findings of the Enquiry Officer is held as perverse. ..."

8. The learned counsel would therefore submit that such well considered award need not be diluted nor it should be interfered with since the second respondent employee had a very genuine and legitimate reason for remaining absent for the days in question.

9. This Court after having perused the materials, pleadings and the award, is of the view that the submissions made on behalf of the second respondent employee have considerable force. Once admittedly, the second respondent employee met with an accident in which he suffered severe injury since his right hand was fractured and he was taking treatment as inpatient from 13.4.2002 to 2.5.2002, the charge against him for remaining absent from 20.4.2002 did not arise at all since the second respondent employee had a very valid and acceptable reason for his absence. The finding of the Labour Court is that the treatment undertaken by the second respondent employee was also evidenced by the documents, which would establish that he was admitted in a private hospital as inpatient for treatment. In the teeth of unimpeachable evidence as found by the Labour Court, this Court does not appreciate as to the basis of the disciplinary action initiated by the petitioner Management against the second respondent employee.

10. The first respondent Labour Court has clearly held that despite the production of documents establishing the fact that the second respondent employee was given treatment as inpatient from 13.4.2002 to 2.5.2002, the Enquiry Officer strangely overlooked such vital and crucial documents and came to the conclusion holding that the charges were proved. Therefore, the Labour Court has rightly come to its own findings that such report of the Enquiry Officer cannot be relied upon as being perverse and legally unacceptable. This Court does not see any sort of infirmity in such a conclusion arrived at by the first respondent Labour Court. Since the removal from service of the second respondent employee is a severe and disproportionate punishment imposed on the employee for his absence for few days, the Labour Court rightly awarded reinstatement with full back wages with continuity of service. Moreover, in the accident, when the second respondent employee's right hand was broken, certainly he might not be fit for reporting for duty as Driver of the petitioner Corporation and therefore, rightly, the Labour Court directed to reinstate the employee in any suitable post on par with the post of Driver.

11. This Court, therefore, does not find anything wrong in such direction issued by the Labour Court in order to interfere with the same. On the whole, the award passed by the first Labour Court does not suffer from any illegality or infirmity and therefore, the same does not call for any interference.

For the foregoing reasons, the Writ Petition is dismissed as devoid of merits and substance. No costs.

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Sd/-
Assistant Registrar (CS VI)

//True copy//

Sub Assistant Registrar

To

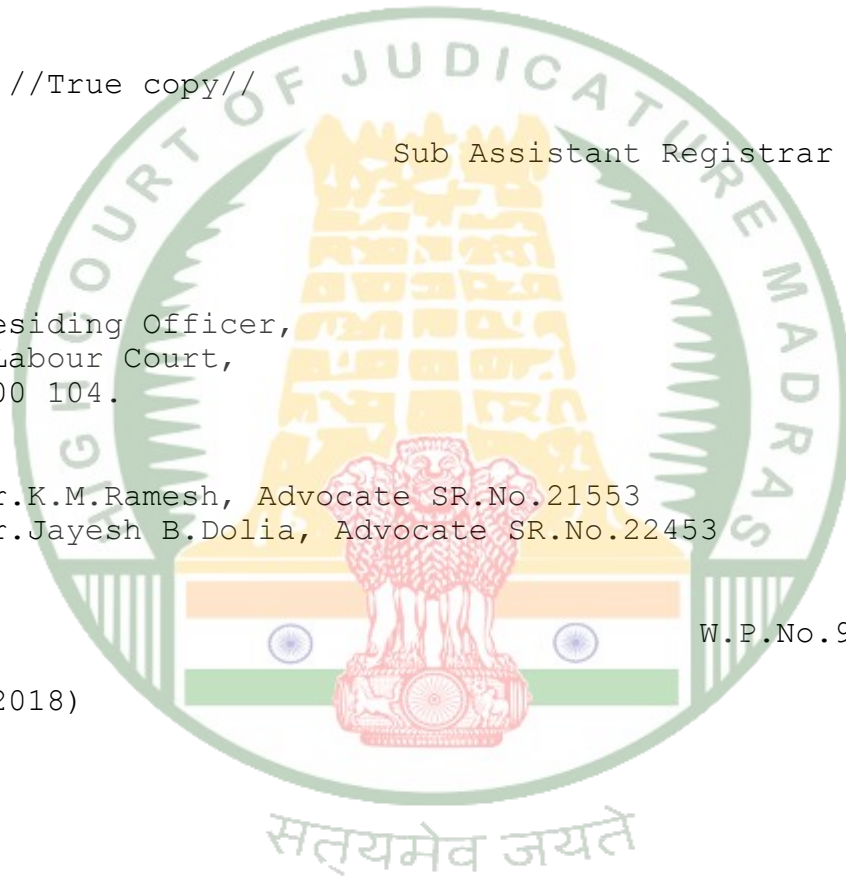
1. The Presiding Officer,
1st Addl. Labour Court,
Chennai-600 104.

+1cc to Mr.K.M.Ramesh, Advocate SR.No.21553

+1cc to Mr.Jayesh B.Dolia, Advocate SR.No.22453

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GN(06/04/2018)



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