

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2018

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.2144 of 2010

M.P.No.1 of 2010

The Management of Metropolitan
Transport Corporation Ltd.,
(Formerly Pallavan Transport Corporation Ltd.,)
Pallavan Salai,
Chennai-600 002. ... Petitioner/Appellant

Vs.

1.R.Alagarsami
2.The Presiding Officer,
III Additional Labour Court,
Chennai-60 104. ... Respondents/Respondents

Petition filed under Article 226 of The Constitution of India
praying for the issuance of a writ of Certiorari calling for the
records pertaining to the Award dated 29.05.2009 made in
I.D.No.186 of 2002 on the file of the 2nd Respondent herein and
quash the same.

For Petitioner ... Mr.M.Chidambaram
For Respondents ... Mr.V.Ajoy Khose for R1
R2- Court

ORDER

The petitioner is the Management of Metropolitan Transport
Corporation, approached this Court seeking the following relief:

"To issue a writ of Certiorari calling for
the records pertaining to the Award dated
29.05.2009 made in I.D.No.186 of 2002 on the
file of the 2nd Respondent herein and quash
the same."

2. The first Respondent / Workman was an employee of the
petitioner / Corporation as Conductor, working from 28.11.1975.
While he was on duty on 09.09.1994, he was assigned Route No.20
and was proceeding from Parrys to Villivakkam. When the bus was
inspected by the Checking Inspector, it was found that the 1st
respondent / workman had issued tickets to three passengers,

which tickets were already sold and failed to fill up the Stage in the Traffic Return and therefore, he was charged for irregularity of issuance of sold tickets.

3. On the basis of the Checking Inspector's report, the first respondent/workman was placed under suspension on 12.09.1994 and thereafter, on 14.09.1994, a charge memo was issued. A domestic enquiry was conducted on the charges and on completion of the enquiry, an enquiry report was submitted on 10.02.1995, holding that the charges were proved. Thereafter, second show cause notice was issued on 12.05.1995. The first respondent / Workman had also given his representation to the second show cause notice on 30.05.1995. However, without considering his representation, the petitioner/Corporation terminated the service of the petitioner on 21.06.1995 and the appeal filed against the termination order was also rejected on 08.10.1995.

4. Thereafter, the first respondent/Workman raised an Industrial Dispute in I.D.No.186 of 2002 and the second respondent/Labour Court, after adverting to all the materials placed on records, has passed an award on 29.05.2009, by directing reinstatement of the first respondent/ Workman with continuity of service with 10% back wages. The said award passed by the Labour Court is put to challenge in this writ petition.

5. Learned counsel for the petitioner / Corporation at the outset, would submit that the Industrial Dispute has been raised belatedly, i.e. after seven years in 2002 after the employee was terminated from service in 1995. The second respondent/Labour Court has given an incorrect finding that the charges were not established by the petitioner Corporation as if there was no evidence available to establish the charges framed against the first respondent/workman. However, the learned counsel would also submit that ultimately the award passed by the second respondent/Labour Court granting reinstatement cannot be countenanced on facts or in law by showing sympathy, ignoring the fact that the first respondent/workman had committed such acts of misconduct on several occasions earlier.

6. At this, the learned counsel for the first respondent/workman would submit that the findings of the second respondent/Labour Court in favour of the first respondent / workman that the charges were not established is well founded based on valid consideration of materials and the same is not liable to be interfered with. He would submit that unless the findings of the Labour Court are legally unacceptable or perverse, the same cannot be subjected to judicial scrutiny by this Court which is exercising its constitutional review under Article 226 of the Constitution of India.

7.As rightly contended by the learned counsel for the first respondent/workman that the petitioner Corporation was unable to establish that the findings rendered by the Labour Court in favour of the first respondent / workman are perverse, calling for interference by this Court. In the absence of perversity, this Court cannot re-appreciate the evidence and give a different finding in the matter. However, as regards the contention put forth by the learned counsel for the petitioner Corporation that the dispute itself was raised after a period of seven years, the Labour Court ought not to have granted reinstatement with continuity of service and also the backwages to the extent of 10%. Such plea on the part of the petitioner / Corporation has to be accepted since admittedly, the first respondent / workman had raised the dispute belatedly, he cannot be conferred to the benefit of backwages. Therefore, this Court has to accept the submission made by the learned counsel for the petitioner / Corporation.

8.At the same time, the contention of the learned counsel for the petitioner Corporation in regard to the findings of the second respondent/Labour Court in favour of the first respondent / Workman cannot be accepted, since as rightly contended by the learned counsel for the first respondent / workman that the findings are based on materials placed on record and such findings do not require any interference by this Court.

9.In the said circumstances, direction given by the Second respondent/Labour Court for reinstatement with continuity of service cannot be found fault with and the same is confirmed. However, the award of the second respondent/Labour Court is modified only to the extent which granted 10% of backwages, which in the opinion of this Court, is without justification and therefore, the same is hereby set aside.

10.In view of the above, the writ petition is partially allowed and the award granting 10% of backwages by the Labour Court alone is hereby set aside and it is also clarified that the petitioner / Corporation is directed to make recovery of the same if already paid, and also make the employer's contribution towards PF admissible to the first respondent/Workman. No costs. Consequently, connected miscellaneous petition closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
III Additional Labour Court,
Chennai-60 104.

+lcc to Mr.V.Ajoy Khose, Advocate Sr.No.4391
+lcc to Mr.M.Chidambaram, Advocate SR.No.4199

VGII(CO)
sm:16.2.2018

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