



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

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THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.13100 of 2016

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

...Petitioner

vs.

1. D. Ponnuramgam
No.2, Pallavan Nagar
Old Perungalathur
Chennai-600 063.

2. The Presiding Officer
III Additional Labour Court
City Civil Court Annexure Buildings
High Court Compound
Chennai-600 104.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed in I.D.No.14 of 2002 dated 30.12.2015 on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents : Mr.D.Veerasekaran, for R1

O R D E R

Being aggrieved against the award of the Labour Court, the Management has filed the present writ petition.

2. The Labour Court, through the impugned award, directed the Management to give backwages and all other attendant benefits to the workmen from the date of joining employment till the date of his superannuation. The Labour Court, on taking



note of the fact that the workmen had attained the age of superannuation, not awarded reinstatement and continuity of service.

3. The first respondent herein joined the petitioner-Management as a conductor on 14.01.1983. While he was on duty on 05.12.1993, the bus in which he was performing his duty as conductor, was checked by 3 checking inspectors and it was alleged that they found that the first respondent herein had sold two already sold tickets to two lady passengers and that he was having 14 such tickets in his hands with the intention to resale the same. It was also alleged that on verification of his cash bag, Rs.13.10 was found as excess amount in his collection. The first respondent was issued with a memo dated 05.12.1993 on the spot by the checking squad. Based on the report submitted by the checking squad, the first respondent was placed under suspension on 08.12.1993 and disciplinary action was initiated. Charges were framed against the first respondent through charge memo dated 08.12.1993. The first respondent gave explanation and denied the charges. Pending disciplinary action, suspension was revoked and he was permitted to join duty on 21.11.1994. Domestic enquiry was conducted and enquiry officer found that the first respondent was guilty on three charges out of four charges levelled against him. Based on the enquiry report, a second show cause notice was issued on 19.04.1995 to the first respondent, who in turn submitted his explanation on 17.05.1995. Thereafter, an order removing the first respondent from service was issued on 22.06.1995. After five years, the first respondent filed a Conciliation petition under Section 2-A of the Industrial Disputes Act, 1947 on 02.03.2000. The Conciliation Officer, through proceedings dated 06.12.2001, reported that no conciliation had reached between the parties, as they stood firmly on their respective stands. Consequently, the first respondent raised an industrial dispute before the Labour Court in I.D.No.14 of 2002. The Labour Court passed the impugned award and thus, the present writ petition.

4. The learned counsel for the petitioner-Management submitted that the first respondent is a habitual offender and he was punished on several occasions for similar lapses and therefore, the Labour Court is not justified in passing the impugned award. He further submitted that the first respondent admitted the lapses for his guilt before the checking squad and therefore, non-examination of the checking inspectors and the two lady passengers may not be fatal to the case of the petitioner-Management.

5. Per contra, the learned counsel for the first respondent submitted that the Labour Court has rightly granted the relief



to the first respondent in view of the fact that the petitioner-Management has not proved the charges by examining the checking inspectors as well as the two woman passengers, to whom the first respondent is alleged to have issued used tickets. Therefore, he contended that non-examining of those two persons goes to the root of the matter and thus, shakes the very finding of the enquiry officer as well as the charges.

6. Heard both sides.

7. The first respondent was working as a conductor in the petitioner-Management. He was issued with a charge memo on 08.12.1993 alleging that he issued two used tickets to two woman passengers; that he was in possession of 14 used tickets to be issued to the passengers and that he was in possession of Rs.13.10 as excess amount. The first respondent denied the charges and domestic enquiry was conducted, wherein, admittedly neither those two passengers nor the checking inspectors were examined as witnesses on the side of the petitioner-Management. Needless to state that a charge memo against the delinquent needs to be proved in a manner known to and acceptable by law. In this case, except marking spot report, summons for enquiry, investigation copy and a copy of the enquiry notice, the petitioner-Management has not examined the persons connected with those documents to speak about the allegations made against the first respondent. Therefore, in my considered view, non-examination of those persons, is fatal to the case of the petitioner-Management. In this case, the first respondent had denied the charges on receiving the charge memo. Therefore, burden lies on the petitioner-Management to prove the charges in the manner known to law. In the absence of such proof, it is not known as to how the enquiry officer has chosen to found that 3 out of the 4 charges levelled against the first respondent were proved. Therefore, I find that the Labour Court was justified in arriving at a conclusion to give monetary relief to the first respondent, by taking note of the fact that he attained the age of superannuation during pendency of the proceedings.

8. At the same time, I find that the Labour Court is not justified in awarding backwages and all other attendant benefits to the first respondent from the date of joining the employment till the date of his superannuation. Admittedly, the first respondent was placed under suspension on 08.12.1993 and that the said suspension was subsequently revoked on 21.11.1994. The order removal from service was passed on 22.06.1995. However, the first respondent has chosen to file the conciliation petition only after a period of 5 years, i.e. on 02.03.2000. It is not known as to why the first respondent had kept quiet for all these 5 years. Therefore, it is evident that the first



respondent was not working from 22.06.1995 onwards. It is an admitted fact that during pendency of the proceedings, he attained the age of superannuation on 31.03.2014. Therefore, this Court is of the view that though the first respondent is entitled for monetary relief, the same cannot be granted from the date of his joining the employment, as awarded by the Labour Court. It is an admitted fact that the first respondent has chosen to initiate legal proceedings after waiting for a period of 5 years and that he also attained the age of superannuation in the meantime, also going by the fact that he did not work at the petitioner-Corporation from 22.06.1995 onwards, this Court is of the considered view that the petitioner-Management can be directed to pay only 50% of backwages to the first respondent from 02.03.2000, being the date of initiation of the conciliation proceedings.

9. Accordingly, this Writ Petition is allowed in part and the award of the Labour Court is modified to the following effect.

The petitioner-Management shall give backwages and all other attendant benefits, including terminal benefits, to the first respondent from 02.03.2000 to 31.03.2014. Such benefit shall be extended to the first respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
III Additional Labour Court,
City Civil Court Annexure Buildings,
High Court Compound,
Chennai-600 104.

+1cc to Mr.D.Veerasekaran, Advocate Sr.102446
+1cc to Mr.M.Chidambaram, Advocate Sr.102710

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rsv[co]
srg 10/01/2020