

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.17595 of 2013

Venkataiah

... Petitioner

vs.

1. The Corporation of Chennai,
rep. By its Commissioner,
Ripon Buildings,
Chennai 600 003.
 2. The Presiding Officer,
II Additional Labour Court,
High Court Buildings,
Chennai 600 104.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus, calling for the records of the 2nd Respondent passed in I.D.No.89 of 2008, dated 25.02.2011 and quash the same and direct the Respondents to reinstate the Petitioner.

For Petitioner : Mrs.N.Beulah John Selvaraj

For 1st Respondent : Mrs.Karthikaa Ashok

O R D E R

Petitioner has come up with this Writ Petition challenging the Award of the Labour Court dated 25.02.2011 made in I.D.No.89 of 2008, upholding the dismissal order passed by the 1st Respondent/Corporation.

2. It is seen that the Petitioner, who was employed as a Sweeper in the 1st Respondent/Corporation was issued a Charge Memo dated 18.10.1995, that he absented himself without prior permission or sanction of leave from 14.03.1994 to 17.12.1995. Enquiry was conducted and a Report dated 03.08.1996 was given by the Enquiry Officer. Thereafter, by an order dated 27.11.1996, the Petitioner was dismissed from service. Challenging the order of dismissal, the Petitioner submitted an Appeal dated 02.01.1997 to the Appellate Authority, who passed Resolution No.69 of 1997, dated 11.06.1997.

3. Thereafter, the Petitioner raised a dispute before the Labour Court in the year 2008, after a delay of 12 years. Though the delay in raising the dispute may not be fatal, it could be considered for the purpose of molding the relief as held by the Apex Court in the case of Nedungadi Bank vs. K.P. Madhavankutty reported in (2000) 2 SCC 455.

4. It is further seen that except the Medical Certificate dated 14.03.1994, no other document was produced by the Petitioner before the Labour Court with regard to the fact that he was taking treatment for mental illness till the date of raising the industrial dispute or thereafter. With regard to the mental illness of the Petitioner, the 1st Respondent/Corporation has stated that the Petitioner could not recollect his memory as regards his employment.

5. Even though, reference has been made by the Petitioner/employee before the Labour Court with regard to Section 11-A of the Industrial Disputes Act, the Labour Court came to the conclusion that the Petitioner/employee did not tender any evidence with regard to his date of birth. Even in the Application filed before the Labour court, the age of the Petitioner/employee is not mentioned.

6. As the Labour Court has rendered a finding of fact upholding the order of dismissal passed against the Petitioner/employee, this Court cannot re-appreciate the evidence and come to a different conclusion.

7. Before parting with the case, learned counsel for the Petitioner submitted that the Petitioner has completed ten years of service in the 1st Respondent/Corporation and that he is eligible for pensionary benefits.

8. While so, Mrs. Karthikaa Ashok, learned counsel appearing for the 1st Respondent/Corporation submitted that the Corporation is unable to state across the bar as to whether the Petitioner had completed ten years of service or not, as the issue before this Court is only challenging the Award of the Labour Court.

9. Taking note of the said submissions, this Court is of the view that if the Petitioner had completed ten years of service in the 1st Respondent/Corporation and had attained the age of superannuation, pensionary benefits due to him, as contemplated under the Rules shall be extended to him, provided, he satisfies the conditions mentioned under the Rules.

10. It is made clear that the Petitioner cannot, as a matter of right, demand pensionary benefits based on the observation made in this order.

11. In fine, the Award of the Labour Court is confirmed and the Writ Petition stands dismissed with the above observation. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.
2. The Presiding Officer,
II Additional Labour Court,
High Court Buildings,
Chennai 600 104.

+1cc to Mrs.N.Beulah John Selvaraj, Advocate Sr.68289
+1cc to M/s.A.Karthika Ashok, Advocate Sr.67651

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srg 20/09/2019

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