

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.7603 of 2010

and

M.P.No.1 of 2010

The Management of Metropolitan
Transport Corporation Ltd.,
Division No.II,
Pallavan Salai,
Chennai - 600002.

..Petitioner

Vs.

1. S.Peter

2. The Presiding Officer,
III Additional Labour Court,
Chennai - 600104.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue the Writ of Certiorari,
to call for the records pertaining to the Award dated 17.11.2009
made in C.P.No.186 of 2003 on the file of the second respondent
herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents: No Appearance for R1

O R D E R

The writ petition on hand, is filed challenging the award
dated 17.11.2009 passed in C.P.No.186 of 2003.

2. The petitioner is the Management of Metropolitan
Transport Corporation Limited. The first respondent/workman was
a driver during the year 1994. On 20.05.2001, while the first
respondent was driving the Route No.62A from Red-Hills to
Poonamallee at about 9.15 a.m., he had caused a fatal accident

with a cyclist, who came in the opposite direction to the bus near to Ponna Supermarket on the Red-Hills Road. Due to rash and negligent driving, the accident was occurred. An action for the commission of serious misconduct was initiated against the first respondent and he was placed under suspension and thereafter, a charge memo was issued on 29.05.2001 for calling his explanation and the first respondent submitted his explanation on 18.07.2001. Thereafter, the suspension was revoked on 28.06.2001 and the first respondent/workman was permitted to join the duty without prejudice to the disciplinary proceedings against him. An enquiry was conducted and the first respondent also had participated in the domestic enquiry. Accordingly, the competent authority

considered the past conduct of the service register of the first respondent/ workman and removed him from service on 10.05.2002. The first respondent preferred an appeal, which was also rejected on 29.05.2002. Thereafter, he raised a dispute which was pending before the Joint Commissioner of Labour, Chennai - 600006. The writ petitioner/corporation filed an Approval Petition before the Commissioner of Labour under Section 33(2) (b) of the Industrial Disputes Act and subsequently, the Approval Petition had been withdrawn by the writ petitioner/corporation. Consequently, the first respondent was permitted to join duty on 31.07.2004 by getting an undertaking dated 09.08.2004.

3. It is pertinent to note that the Approval Petition filed under Section 33(2)(b) of the Industrial Disputes Act, was withdrawn by the petitioner/corporation, in view of the fact that the first respondent/workman had given an undertaking on 09.08.2004. Considering the undertaking, the first respondent was reinstated in service. Further, the first respondent has agreed that he will not file any case in any Court, regarding payment of back-wages. However, in violation of the undertaking given by the first respondent, he had filed CP.No.186 of 2003 before the III Additional Labour Court, Chennai, claiming the back-wages from 10.05.2002 to 25.04.2003.

4. The learned counsel for the writ petitioner made a submission that an undertaking letter given by the first respondent on 09.08.2004 is filed in page No.7 of the typed set of papers filed along with the writ petition. The letter of undertaking addressed the General Manager of writ petitioner/corporation, reveals that in view of the fact that the order of termination was revoked, the writ petitioner will not claim any back-wages and other consequential benefits. It is further aggrieved that he

will not approach the Court for claiming any such back-wages or otherwise accepting the letter of undertaking, the first respondent workman was permitted to rejoin the duty and he was working.

5. The notice in the present writ petition had been already served to the first respondent and for the past 9 years, none appeared for the first respondent nor the first respondent appeared in person.

6. Under these circumstances, this Court is to consider the letter of undertaking given by the first respondent/workman on 09.08.2004. The said letter categorically states that the writ petitioner was reinstated in service and he will not claim any back-wages or file any case before the Court claiming any such back-wages or consequential monetary benefits.

7. Under these circumstances, this Court is of an opinion that the Labour Court had failed to consider the letter of undertaking given by the first respondent. The letter of undertaking dated 09.08.2004 was marked as Ex.M3. Though, the letter of undertaking was marked as document, the Labour Court had failed to consider the said agreement of the workman offered to the employer. When the workman had given a letter of undertaking that he will not claim any back-wages and consequential benefits and based on the letter, he was reinstated in service. Hence, thereafter, he cannot claim the back-wages by filing a separate writ petition and the Labour Court has not considered the above aspects.

8. Under these circumstances, the writ petition deserves to be considered and accordingly, the award passed by the second respondent in C.P.No.186 of 2003 dated 17.11.2009 is quashed and the writ petition stands allowed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
III Additional Labour Court,
Chennai - 600104.

+lcc to Mr.M.Chidambaram, Advocate sr.77801

W.P.No.7603 of 2010

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nr 01/11/2019



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