

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.32837 of 2013

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

... Petitioner

vs.

1. J.Suresh Kumar

2. The Presiding Officer,  
II Additional Labour Court,  
City Civil Court,  
High Court Compound,  
Chennai 600 104.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, calling for the records pertaining to the order dated 20.11.2012 made in I.D.No.761 of 2010 on the file of the 2<sup>nd</sup> Respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram  
For 1<sup>st</sup> Respondent : Mr.V.Balamurugan

O R D E R

Challenging the Award dated 20.11.2012 passed by the 2<sup>nd</sup> Respondent/Labour Court in I.D.No.761 of 2010, the Petitioner/Transport Corporation has come up with the present Writ Petition.

2. According to the Petitioner/Transport Corporation, the 1<sup>st</sup> Respondent, who was employed in their Corporation as a Junior Office Assistant, is a habitual absentee. As he absented himself continuously for more than eight consecutive days, with effect from 26.05.2006, the Petitioner/Transport Corporation issued a Charge Memo to him on 17.06.2006, invoking Section 25 (vi) of the Certified Standing Orders. To the said Charge Memo, the 1<sup>st</sup> Respondent/employee submitted his explanation along with Medical Certificate and requested the Petitioner/Transport Corporation to permit him to join duty. After considering his

explanation and the Medical Officer's Certificate, the 1<sup>st</sup> Respondent was permitted to join duty, vide order dated 22.06.2006, without prejudice to the enquiry against him.

3. Thereafter, a domestic enquiry was ordered to be conducted by an external Enquiry Officer, who conducted the enquiry and forwarded his findings on 27.12.2006 to the Petitioner/Transport Corporation holding that all the charges levelled against the 1<sup>st</sup> Respondent/employee were held proved. Based on the findings of the Enquiry Officer, a second Show Cause Notice was sent to the 1<sup>st</sup> Respondent on 21.04.2007 along with the Enquiry findings, and the 1<sup>st</sup> Respondent sent his explanation to the same. After considering his explanation and on examination of the 1<sup>st</sup> Respondent's past records, that he was punished on 29 occasions, out of which 28 were for the misconduct of unauthorized absence, the Petitioner/Transport Corporation terminated the 1<sup>st</sup> Respondent/employee from service, on 31.05.2007.

4. Against the order of termination, the 1<sup>st</sup> Respondent/employee raised an Industrial Dispute in I.D.No.761 of 2010 before the II Additional/Labour Court, wherein, he was examined as W.W.1 and marked four documents on his behalf. On the side of the Petitioner/Transport Corporation, two witnesses were examined and 17 documents were marked. As the Labour Court allowed the Industrial Dispute by directing the Petitioner/Transport Corporation to reinstate the 1<sup>st</sup> Respondent into service with 50% of backwages, continuity of service with all other attendant benefits, the Petitioner/Transport Corporation has come up with the present Writ Petition.

5. Learned counsel for the Petitioner/Transport Corporation strenuously contended that the 2<sup>nd</sup> Respondent/Labour Court failed to take note of the fact that the domestic enquiry was held in a proper manner prior to the termination of the 1<sup>st</sup> Respondent from service. According to the learned counsel, the Petitioner/Transport Corporation has given all opportunities to the 1<sup>st</sup> Respondent, but he has failed to prove his innocence.

6. In reply, learned counsel appearing for the 1<sup>st</sup> Respondent/employee submitted that, it is true that the 1<sup>st</sup> Respondent/employee absented himself from duty, however, his absence is on genuine grounds. It is his contention that the Labour Court ought not to have deprived 50% of backwages to the 1<sup>st</sup> Respondent/employee.

7. Drawing the attention of this Court to Ex.M-13-Punishment details, annexed in the typed set of papers, learned counsel appearing for the 1<sup>st</sup> Respondent contended that, on many occasions, the dates pertaining to the past records of the 1<sup>st</sup>

Respondent/employee were the same and instead of one past record, it has been shown as two past records. Hence, according to the learned counsel, past records of the 1<sup>st</sup> Respondent/employee produced by the Petitioner/Transport Corporation cannot be taken into account, and that the Labour Court has rendered a finding of fact by interfering with the punishment imposed.

8. Learned counsel appearing for the 1<sup>st</sup> Respondent/employee further contended that, once the punishment imposed by the employer is set aside, the employee is entitled to full backwages, apart from reinstatement, continuity of service and other benefits.

9. Heard the learned counsel for the parties and gone through the material documents available on record.

10. It is not in dispute that the 1<sup>st</sup> Respondent/employee was absent from service from 26.05.2006 and a Charge Memo invoking Section 25(vi) of the Certified Standing Orders, was issued to him on 17.06.2006. Not satisfied with the explanation given by the 1<sup>st</sup> Respondent/employee, a domestic enquiry was conducted, wherein, the 1<sup>st</sup> Respondent/employee was given an opportunity to prove his innocence. But, when the employee has not disputed the fairness of the domestic enquiry, the finding of the Labour Court that the domestic enquiry is not fair and proper, is not correct.

11. Even though a separate Writ Petition has not been filed challenging the preliminary order, in view of the decision rendered by the Apex Court in Cooper Engineering Ltd. vs. P.P.Mundhe, reported in AIR 1975 SC 1900, the preliminary issue could be challenged along with the final Award. In the case on hand, a ground has been raised with regard to the fairness of the enquiry, but, in the prayer portion, the Management has not challenged the preliminary order. Though it appears that the domestic enquiry is fair and proper, since there is neither a separate Writ Petition nor a composite prayer challenging the preliminary order, this Court is not inclined to interfere with the order of the Labour Court, holding that, the preliminary enquiry is not fair and proper.

12. As to the allegation of the 1<sup>st</sup> Respondent/workman that two or more past records in the Punishment Details marked by the Petitioner/Transport Corporation contain the same date, it is seen that the first column of the Punishment Details contains the 'date of preparation of the Award'; the second column contains the 'nature of offence' and the third column contains the 'punishment'. Thus, it is seen that the Punishment awarded for two or more charges was prepared on same dates, and, it

cannot be construed that the 1<sup>st</sup> Respondent/employee has been imposed with the punishment twice in the past records duly produced before the Labour Court.

13. When the fact remains that the 1<sup>st</sup> Respondent/employee had bad past records and that, he had been unauthorizedly absent on 28 occasions, and had suffered the punishment of postponement of annual increment 11 times, and also that he had admitted his guilt with regard to the charges alleged against him, the finding of the Labour Court that the employer has not established the charges against the employee, either in the enquiry or before the Labour Court, is perverse.

14. Though the Labour Court is empowered to interfere with the punishment imposed by the employer, by invoking Section 11-A of the Industrial Disputes Act, the leniency in granting 50% backwages to the employee herein, brushing aside the fact that he had 28 bad past records, as to the misconduct of 'unauthorized absence', is not acceptable. In such view of the matter, and taking note of the fact that the 1<sup>st</sup> Respondent/employee has joined the services of the Petitioner/Transport Corporation in October 1992, this Court is inclined to modify the Award of the Labour Court as "one of reinstatement without backwages, but with continuity of service and other attendant benefits".

15. It is represented that the 1<sup>st</sup> Respondent/employee has withdrawn 50% of the backwages deposited by the Petitioner/Transport Corporation, pursuant to the order dated 09.12.2014 passed in M.P.No.3 of 2014 in W.P.No.32837 of 2013. That apart, this Court, vide order dated 16.12.2014 in M.P.No.2 of 2014 in the above Writ Petition, directed the Petitioner/Transport Corporation to pay the last drawn wages of Rs.8,500/- per month to the 1<sup>st</sup> Respondent/employee, under Section 17-B of the I.D. Act. In view of the modification of the Award of the Labour Court into one without backwages, this Court directs the 1<sup>st</sup> Respondent/employee to refund the amount of 50% backwages withdrawn by him, along with interest at 6% per annum, to the Petitioner/Transport Corporation, within a period of four (4) months from the date of receipt of a copy of this order. The wages drawn by the 1<sup>st</sup> Respondent/employee under Section 17-B of the Act, need not be disturbed.

16. This Court makes it clear that the Petitioner/Transport Corporation shall permit the 1<sup>st</sup> Respondent/employee to report for work within thirty (30) days from the date of receipt of a copy of this order, failing which, he will be entitled to full monthly wages, as if he had been rendering service, on and from the expiry of thirty days from the date of receipt of this order.

This Writ Petition is disposed of with the above direction.  
No costs. Consequently, connected M.P.No.1 of 2013 and M.P.No.1  
of 2014 are closed.

s/d-  
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

(aeb)

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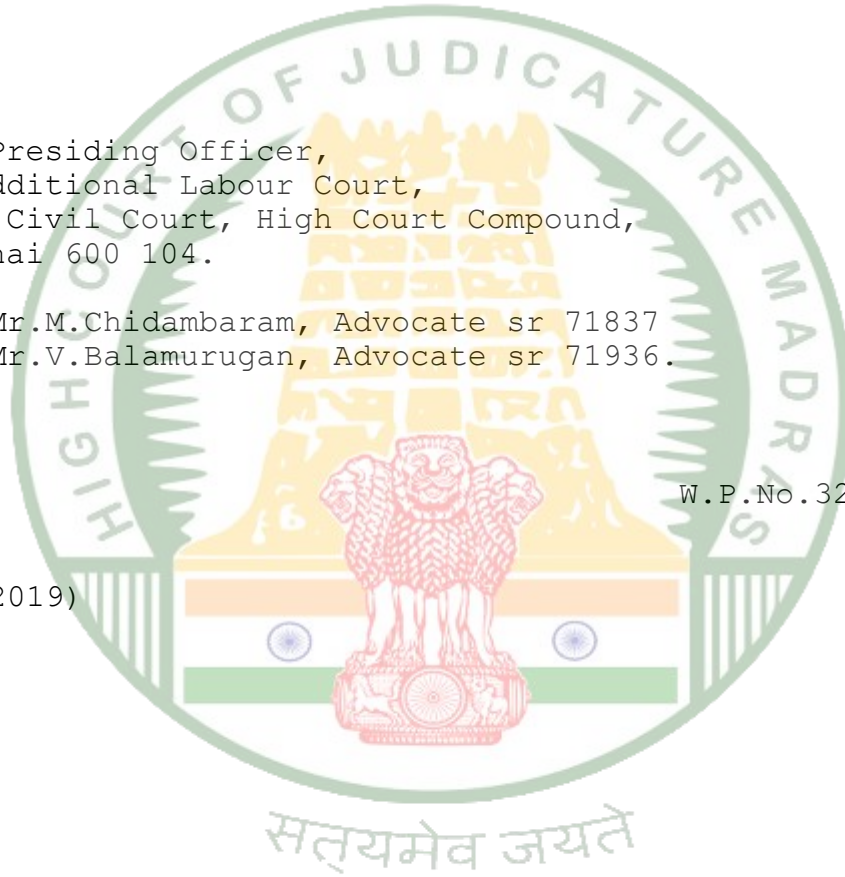
The Presiding Officer,  
II Additional Labour Court,  
City Civil Court, High Court Compound,  
Chennai 600 104.

+1 CC to Mr.M.Chidambaram, Advocate sr 71837

+1 CC to Mr.V.Balamurugan, Advocate sr 71936.

W.P.No.32837 of 2013

PA(CO)  
SP(05/11/2019)



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