

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.5349 of 2013

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

... Petitioner

vs.

1. K.B.Manikandan

2. The Presiding Officer,
III Addl. Labour Court,
City Civil Court Annexure Buildings,
II Floor, Chennai 600 104.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records pertaining to the Award dated 13.08.2012 made in I.D.No.777 of 2010 on the file of the 2nd Respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram
For 1st Respondent : Mr.V.Balamurugan

O R D E R

Challenging the Award dated 13.08.2012 passed by the 2nd Respondent in I.D.No.777 of 2010, the Petitioner/Transport Corporation has come up with the present Writ Petition.

2. According to the Petitioner/Transport Corporation, the 1st Respondent was appointed as Conductor at Vadapalani Depot in the year 1988. As he absented himself unauthorisedly from 25.09.2007 for more than eight consecutive days, charges were framed against him on 15.10.2007. After receiving the Charge Memo, the 1st Respondent submitted his explanation with Medical Certificate on 23.11.2007. Though the Petitioner/Corporation was not satisfied with the 1st Respondent's explanation, they reinstated him into service by an order dated 26.11.2007 and permitted him to join duty.

3. Thereafter, the Petitioner/Transport Corporation issued a Second Show Cause Notice to the 1st Respondent on 05.05.2008, to which, the 1st Respondent submitted his explanation on 23.05.2008. Being not satisfied with his explanation, the Petitioner/Transport Corporation terminated the 1st Respondent from service vide proceedings dated 27.06.2008.

4. Pursuant thereto, the 1st Respondent approached the Labour Court under Section 2A of the Industrial Disputes Act for conciliation, which ended in failure. Thereafter, the 1st Respondent raised an industrial dispute before the 2nd Respondent/Labour Court in I.D.No.777 of 2010. After considering the oral and documentary evidence, the Labour Court allowed I.D.No.777 of 2010 on 13.08.2012 and directed the Petitioner/Management to reinstate the 1st Respondent into service and pay him 50% backwages with all attendant benefits. Challenging the same, the present Writ Petition is filed by the Petitioner/Management.

5. Heard the learned counsel for the parties and carefully perused the material documents available on record.

6. Admittedly, no enquiry was conducted and no documentary evidence was produced before the Labour Court, to establish the charges against the 1st Respondent/employee. Hence, the Labour Court came to the conclusion that the 1st Respondent would be entitled to reinstatement into service with 50% backwages and other attendant benefits. As the Labour Court has rendered a finding of fact and that the 1st Respondent has also not filed any Writ Petition challenging the Award in respect of depriving him 50% backwages, this Court is of the view that the Award passed by the Labour Court need not be interfered with.

7. However, at the end of arguments, in order to give a quietus to the issue, learned counsel appearing for the 1st Respondent/employee submitted that the 1st Respondent/employee is willing to forego 25% of 50% backwages granted by the Labour Court. To that effect, learned counsel appearing for the 1st Respondent/employee produced a Memo dated 07.08.2019 signed by him and the 1st Respondent/employee, wherein, it is stated as follows:

“The 1st Respondent agrees to forego 25% of backwages and receive balance 25% from the date of removal to the date of Writ petition numbered, after regularizing the pay and fixing current pay as on the date of reinstatement.

The 1st Respondent agrees to adjust the 17B wages paid as on the date of reinstatement from the 25% of wages payable from the date of Writ Petition to the date of reinstatement. The Petitioner Corporation may be permitted to deduct Provident Fund and other statutory deductions from the 25% of current wages payable to the workmen."

8. Taking into account the Memo filed by the 1st Respondent/employee, the Award passed by the Labour Court is modified as under:

"(i) The Petitioner/Transport Corporation shall reinstate the 1st Respondent into service and pay him 25% backwages from the date of the Award till this date, after adjusting 17-B wages payable to him.

(ii) For the purpose of calculating terminal benefits and other attendant benefits payable to the 1st Respondent/employee, the Petitioner/Transport Corporation shall take into account the entire 100% wages due to him.

(iii) This exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order."

This Writ Petition stands disposed of with the above directions. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

The Presiding Officer,
III Addl. Labour Court,
City Civil Court Annexure Buildings,
II Floor, Chennai 600 104.

+1 cc to M/s.M.Chidambaram, Advocate Sr.No. 70889
+1 cc to M/s.V.Balamurugan, Advocate Sr.No. 71426

AKM/17.09.19/3P-4C /

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