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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.41011 of 2006

The Manager of
Metropolitan Transport Corporation
Division - 1), (Formerly P.T.C.)
Pallavan Illam, Anna Salai,
Chennai 600 002.

... Petitioner

VS.

1.D.Ravichandra Bhagavan

2.The Presiding Officer,
II Additional Labour Court,
Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records in I.D.No.663 of 1999, dated 17.10.2005 on the file of the 2nd Respondent and quash the same.

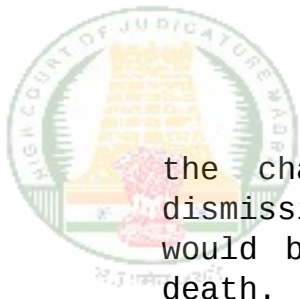
For Petitioner : Ms.Pooja Damodaran
for Mr.K.Moorthi

For 1st Respondent : Mr.V.Ajoy Khose

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 17.10.2005 passed by the 2nd Respondent/Authority in I.D.No.663 of 1999.

2. It is seen that, the 1st Respondent herein, an employee of the Petitioner/Transport Corporation applied for leave and over-stayed, which is a misconduct according to the Standing Orders of the Transport Corporation and after detailed enquiry, he was dismissed from service on 23.06.1995. After the conciliation failed, the matter was taken up before the Labour Court and the Labour Court came to the conclusion that, even if



the charges are proved with regard to absence from duty, dismissing an employee for staying beyond a period of leave would be slapping capital punishment, thereby causing economic death. As the punishment imposed on the employee is shockingly disproportionate, the Labour Court set aside the punishment of dismissal from service and awarded reinstatement into service with continuity of service, 50% backwages and all other attendant benefits.

3. Learned counsel for the Petitioner/Transport Corporation contended that, over-staying of leave by the 1st Respondent/employee is a serious misconduct and there is no evidence to show that, the employee has informed the employer about his absence from duty.

4. M.W.1 - Management witness has deposed before the Court that, the Management was informed about the employee's leave and that, he has received the leave letters of the 1st Respondent/employee, while he was performing duty as a Time-keeper. In this regard, learned counsel appearing for the 1st Respondent/employee drew the attention of this Court to Ex.M8 - Leave Letters of the employee produced in the enquiry proceedings.

5. After analyzing the oral and documentary evidence available on record, more particularly, taking note of the evidence of M.W.1, the Labour Court held that, it cannot be construed that, the 1st Respondent/employee absented himself from duty without any intimation to the employer or there was negligence on his part or lack of interest in duty.

6. Learned counsel for the Petitioner/Transport Corporation submitted that, the case of the 1st Respondent/employee could be considered, if he accepts the proposal given by the Government vide Letter No.5370/C2/2021, dated 24.07.2021 in respect of Clause No.2(i). For better appreciation, the said clause is extracted hereunder:

2. There were 283 cases, except TNSTC (MDU) placed before the Board for discussion. After detailed deliberations, the following decisions were taken:



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(i) In respect of Ex-employees having required qualifying service for pension under 1998 Scheme to go on compulsory retirement on the date of dismissal and to allow eligible retirement benefits as per Rules in force. in any one of the proposals of the Government vide Letter No.5370/C2/2021, dated 24.07.2021

7. However, as the dismissal order against the 1st Respondent/employee was passed in the year 1995 and more than 26 years have gone by, taking note of the pandemic situation and on equity, this Court is inclined to modify the Award, thereby reducing the backwages to 25%, and directing the employer to pay the independent contribution of the employee towards Provident Fund from the date of dismissal till the date of his retirement in 2016, thereby enabling the employee to get better terminal benefits including pension.

8. Learned counsel appearing for the 1st Respondent/employee submitted that, unless otherwise, the entire period of service is taken into account, the employee will not be entitled to any pensionary benefits.

9. I find much force in the contention of the learned counsel appearing for the 1st Respondent/employee. In view of the same, the Award dated 17.10.2005 passed by the Labour Court in I.D.No.663 of 1999, is modified as follows:

(i) The 1st Respondent/employee shall be reinstated into service with continuity of service with 25% backwages and all other attendant benefits.

(ii) Since the 1st Respondent/employee has attained the age of superannuation, he will be entitled to 25% backwages as mentioned supra from the date of dismissal till the date of his reinstatement.

(iii) Wages, if any, paid under Section 17-B of the Industrial Disputes Act, 1947, shall not be withdrawn or adjusted.

(iv) The employer viz. Petitioner/Transport Corporation shall pay the EPF contribution of the employee and the employee within a period of four months



from the date of receipt of a copy of this order, in order to enable the 1st Respondent/employee to get better terminal benefits.

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(v) The employer, i.e. the Petitioner/Transport Corporation shall release Gratuity to the 1st Respondent/employee within a period of two months from the date of receipt of a copy of this order.

(vi) Pensionary benefits shall be extended to the 1st Respondent/employee periodically with effect from 01.09.2021 and arrears of pension shall be paid within a period of six months from the date of receipt of a copy of this order.

10. However, this Court makes it clear that, this order cannot be treated as a precedent.

The Writ Petition is ordered accordingly. No costs. Consequently, connected M.P.No.1 of 2010 is closed.

Sd/-

Assistant Registrar (CS-CO)

// True Copy //

Sub Assistant Registrar

(aeb)

To:

1. The Presiding Officer,
II Additional Labour Court,
Chennai.
2. The Manager of Transport Corporation,
(Division-1), (Formerly PTC),
Pallavan Illam, Annasalai,
Chennai-600 002.

+1CC to Mr.V.Ajoy Khose, Advocate, SR.No.37141

+1CC to Mr.K.Moorthi, Advocate, SR.No.37326

W.P.No.41011 of 2006

SRA(CO)

B.VC (09/09/2021)