



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	28.02.2022
PRONOUNCED ON	07.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.10516 OF 2011

The Management of
Metropolitan Transport Corporation,
Pallavan House,
Chennai-600 002.

...Petitioner

Vs.

1.U.Jeeva

2.The Presiding Officer,
I Additional Labour Court,
Chennai-600 104.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorari, calling for the records pertaining to the Award dated 18.09.2010 made in I.D.No.275 of 2004 on the file of the second respondent herein and to quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondent : Mr.K.V.Dhanapalan
No. 1 for M/s.T.Fenn Walter Associates

O R D E R

Heard the learned counsel for the parties.

2. Through a charge memo dated 26.10.1995, the petitioner-Corporation had framed charges against the first respondent, stating that he was unauthorizedly absent from 01.10.1995. Based on an explanation given by the first respondent on 25.11.1995, the first respondent was permitted to rejoin duty and his services were transferred from Vyasarpadi Depot to Ambattur Depot. Thereafter an enquiry was conducted, whereby the charges were held to be proved against the first respondent herein and ultimately on 22.01.1997, the petitioner-Corporation had dismissed the first respondent from the services. The first



respondent claims to have raised a dispute before the Conciliation Officer which ended in failure and thereafter had raised an Industrial Dispute in I.D.No.275 of 2004 before the I Additional Labour Court, Chennai. Through the impugned Award dated 18.09.2010, the dismissal order dated 22.01.1997 was set aside and the first respondent was directed to be reinstated back into services together with continuity of service, back wages and other attendant benefits. This Award is under challenge in the present Writ Petition.

3. The learned counsel for the petitioner-Corporation submitted that though the termination order was passed on 22.01.1997, the first respondent had raised the dispute only in the year 2004 and therefore the Award requires to be quashed on the ground of laches.

4. Per contra, the learned counsel for the first respondent submitted that owing to the conciliation proceedings raised by the first respondent herein was pending, he could not move the Labour Court in time and therefore, there was no laches as such. Even otherwise, he submitted that the first respondent's explanation to the charge sheet was accepted and he was permitted to rejoin duty and therefore the enquiry itself is vitiated. It is his further submission that the first respondent had not issued any notice for the enquiry and the charges came to be proved by setting the first respondent ex-parte. His contention in this regard was that the petitioner-Corporation had sent the enquiry notice to the first respondent's old address.

5. The entire case of the petitioner-Corporation seems to be on a misconception of facts of the case. Firstly, the learned counsel for the petitioner attempted to argue that the period of unauthorized absence was for several months. However, on the contrary, it is seen from the charge memo dated 26.10.1995 that the petitioner-Corporation had claimed that the first respondent was unauthorizedly absent from 01.10.1995 onwards. Apparently, the period between 01.10.1995 to 25.12.1995 is the period of unauthorized absence. If the first respondent herein had thereafter absented himself, that would give rise to a fresh cause of action of unauthorized absence and the absence after the charge sheet, cannot be clubbed along with the charge sheet dated 26.10.1995. In this background, it can be said that the number of days of unauthorized absence of the first respondent was about 25 days.

6. The Labour Court, on perusal of the records, had rendered a finding that the notice to the first respondent in the enquiry was sent to him when he was on medical leave to his old address, which fact was admitted by the petitioner-



Management's witness. The first respondent's medical ailment was also substantiated through a Medical Certificate and Fitness Certificate for the period of his absence after the charge memo. Thus, it can be said that the enquiry was not conducted in a fair and proper manner, which is violative to the Principles of Natural Justice. This apart, the Labour Court had found that the dismissal order had taken into consideration the period of his absence after the charge memo dated 26.10.1995 and thereby dismissed him from services, which was held to be unjustifiable. For this purpose, the Labour Court had placed reliance on the Medical Certificate and Fitness Certificate submitted by the first respondent herein, as well as the failure on the part of the petitioner-Corporation in not referring the first respondent to the medical board. I do not find any infirmity in the findings rendered by the Labour Court in this regard.

7. Insofar as the ground of laches in having belatedly raised the Industrial Dispute is concerned, the first respondent had submitted that prior to raising an Industrial Dispute, he had raised a dispute for conciliation before the Authorities, which ended in failure and hence, there was a delay in approaching the Labour Court. Even otherwise, there are catena of decisions of the Hon'ble Supreme Court, wherein it was categorically held that the provisions of the Limitation Act has no application to the Labour Court for adjudication of an Industrial Dispute between the workman and the employer and that a liberal approach requires to be taken favouring the workmen, since the Labour Laws are a welfare legislation. Among the various decisions on this ratio, the case in Raghbir Singh Vs. General Manager, Haryana Roadways, Hissar reported in 2014 (10) SCC 301 is one among them. Similar view has also been taken in the case of Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd., reported in 1999 (6) SCC 82, in the following manner:-

"10. It follows, therefore, that the provisions of Article 137 of the Schedule to Limitation Act, 1963 are not applicable to the proceedings under the act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the labour court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by



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declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/ termination or dismissal. The Court may also in appropriate cases direct the payment of part of the back wages instead of full back wages."

8. In the case of S.M.Nilajkar Vs. Telecom District Manager reported in 2003 (4) SCC 27, the Hon'ble Supreme Court held as follows:-

"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. ... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief."

In the light of the aforesaid decisions, the ground of laches raised by the learned counsel for the petitioner-Corporation, cannot be sustained.

9. Above all, the punishment of dismissal from services for a period of 25 days appears to be disproportionate to the charges of unauthorized absence, particularly, when the first respondent had given his explanation on 25.11.1995, which was accepted by the petitioner-Corporation and he was also permitted to join duty on transfer. Having condoned his absence, imposing the punishment of dismissal from services without sending a proper notice of enquiry, further supports the case of the first respondent herein.

***10. In the result, there are no merits in the present Writ Petition. Accordingly, the Award of the I Additional Labour Court, Chennai passed in I.D.No.275 of 2004 dated 18.09.2010, is confirmed and the Writ Petition stands dismissed. Consequently, the petitioner-Corporation shall comply with the Award of the Labour Court dated 18.09.2010 and disburse the monetary benefits**



to the first respondent, within a period of four weeks from the date of receipt of a copy of this order. There shall be no orders as to costs.

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Sd/-
Assistant Registrar (CS-VIII)
Dated : 15.03.2022

*Corrected as per Order of this
Court dated 04.04.2022

Sd/-
Assistant Registrar (CS-VIII)
Dated : 18.04.2022

//True Copy//

Sub Assistant Registrar

DP

To

The Presiding Officer,
I Additional Labour Court,
Chennai-600 104.

To be
substituted
to the Order
already
despatched on
22.03.2022

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.22598
+1cc to M/s.T.Fennwalter Associates, S.R.No.15095

+1cc to M/s.T.Fennwalter Associates, S.R.No.22962 [20/06/2022]

W.P.No.10516 of 2011

NK (CO)
SB (16/03/2022)
RVM (19/04/2022)