



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 10.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.12159 of 2012

and

M.P.No.1 of 2012

General Manager,
Southern Railway,
Park Town, Chennai - 600 003.

... Petitioner

Vs

1. The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court,
Chennai.

2. K.P.Thangaraj

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records from the file of the 1st respondent made in I.D.No.3 of 2012 dated 22.02.2012 and quash the same.

For Petitioner : Mr.P.T.Ramkumar,
Standing Counsel

For R2 : Mr.K.Vasuvenkat

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The second respondent herein was issued a charge sheet dated 28.04.1997 for charges of unauthorised absence for the period from 26.04.1996 to 10.05.1996 and from 13.05.1996 to 26.09.1996. Since the second respondent did not respond to the charge memo, an enquiry came to be held and ultimately, a punishment of removal from service was imposed on him, with effect from 11.09.1998.



3. The appeal filed by the second respondent was dismissed on 22.05.1999. So also the revision petition was dismissed on 25.06.1999. After about 7 years, he had raised an Industrial Dispute on 02.11.2006, which ended in a failure on 26.07.2007. A reference under Section 10(2)(A) was made on 20.12.2011, which was taken on file by the Central Government Industrial Tribunal in I.D.No.3 of 2012. In this proceeding before the Tribunal, the petitioner was set ex-parte and accordingly, an award of reinstatement into service, together with 25% of the back wages, including continuity of service and all other attendant benefits, was passed. Pursuant to the award, the second respondent herein was reinstated back into service on 12.08.2012. Subsequently, he was promoted as a Senior Technician, with effect from 01.09.2006 and thereafter, he had retired on 30.04.2017, after reaching the age of superannuation. In the meantime, the petitioner has challenged the Award in this writ petition.

4. The learned Standing Counsel appearing for the petitioner submitted that the second respondent has not sought for prior permission for taking leave, as required under the Rules of the Indian Railway Establishment Code and that he had been evading receipt of the charge sheet, as well as the summons in the domestic enquiry. It is also his submission that the second respondent herein had belatedly approached the Labour Court by raising a dispute for consideration and the reference was also delayed and therefore, the Central Government Industrial Tribunal ought to have considered this delay and excluded the time, while ordering back wages.

5. Per contra, the learned counsel for the second respondent submitted that that all these grounds cannot be raised in the present writ petition, since the management had chosen to remain ex-parte. According to him, the very fact that the back wages has been reduced to 25% takes care of the delay caused by the second respondent in raising the dispute and therefore, no interference is required to the impugned award.

6. When the petitioner management had not appeared before the Industrial Tribunal and also failed to take steps to have the ex-parte award set aside, it would be impermissible for them to raise any grounds touching upon the merits of the Industrial Dispute before this Court.

7. It is needless to point out that while dealing with an award of the Industrial Tribunal or Labour Court, the scope of interference under Article 226 of the Constitution of India, is very limited. Re-appreciation of the findings, based on the evidences before the Labour Court, has been held to be



impermissible, in various decisions of the Hon'ble Supreme Court, as well as this Court. As such, the contentions of the learned Standing Counsel of the petitioner does not require consideration.

WEB COPY

8. Insofar as the award of 25% of the back wages is concerned, it is seen that the punishment was imposed on 11.09.1998. Within a reasonable time, the second respondent had filed the appeal on 21.04.1999, which was dismissed on 22.05.1999. The revision petition was also filed within 30 days on 18.06.1999, which came to be rejected on 25.06.1999 by the first respondent. Thereafter, the second respondent had chosen to file another appeal, which is not a remedy available to him under the regulations governing the Southern Railways. After about 7 years, he had raised an Industrial Dispute before the Conciliation Officer on 02.11.2006, which ended in a failure on 26.07.2007. There is no explanation as to why the second respondent herein had not challenged his punishment between 25.06.1999 and 02.11.2006. The Labour Court had also not dealt with these aspects, but had awarded back wages from the date of the punishment. In the absence of any explanation for the belated raising of Industrial Dispute, the submission of the learned counsel for the petitioner gains significance and this Court, on consideration of such submissions, is also of the view that the period between 25.06.1999 and 02.11.2006 can be excluded from the arrears of back wages to be payable to the second respondent herein.

9. In the light of the above observations, the impugned order dated 22.02.2012, insofar as it awards 25% of the back wages from the date of punishment, is modified as follows:

(a) The petitioner management shall pay 25% of the back wages, from the date of punishment till 25.06.1999 and from 02.11.2006 till 12.08.2012.

(b) All other findings made in the impugned order are confirmed.

10. The Writ Petition stands disposed of, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

hvk



To

1. The General Manager,
Southern Railway,
Park Town,
Chennai - 600 003.
2. The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court,
Chennai.

+1cc to M/s.P.T.Ram Kumar, Advocate, S.R.No.8698

+1cc to M/s.K.Vasuvenkat, Advocate, S.R.No.8478

W.P.No.12159 of 2012
and
M.P.No.1 of 2012

PMK (CO)
SU (07/03/2022)