



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM
THE HON'BLE MR.JUSTICE **M.S.RAMESH**

W.P. No.17616 of 2013 and M.P. No.1 of 2014

The Management,
Tamil Nadu Arasu Pokkuvarathu Kalagam,
Villupuram (Division-II),
Kancheepuram.

.. Petitioner

Vs

1.The Presiding Officer,
II Additional Labour Court,
Madras High Court Campus,
Chennai.

2.S.Usha

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records of the first respondent Labour Court in I.D. No.219 of 2000 dated 13.09.2012 and quash the same as illegal.

For Petitioner : Ms.S.Pavithra

For Respondents : No appearance for R2

R1-Court

ORDER

This petition has been filed by the petitioner, challenging the Award dated 13.09.2012 passed by the Labour Court in I.D. No.219 of 2000.



2.The second respondent herein is the Wife of the late employee R.V.Subramani, who was charged for the misconduct of un-authorised absence from 03.09.1996 onwards. Based on the levelled charges, a domestic enquiry was conducted, whereby the charges were held to be proved. Ultimately, by an order dated 13.08.1997, the husband of the second respondent herein was terminated from service. It was challenged before the Labour Court in I.D. No.219 of 2000. Pending the Industrial Dispute, the employee R.V.Subramani expired and the second respondent was brought on record. By an Award dated 13.09.2012, the Claim Petition was partly allowed and a compensation of Rs.5,00,000/- was awarded. The Transport Corporation has challenged this Award in this Writ Petition.

3.Learned counsel appearing for the Transport Corporation submitted that the charge of un-authorised absence is serious misconduct and before the order of termination was passed, the domestic enquiry was conducted in a fair and proper manner and after giving due opportunity to the husband of the second respondent herein, he was terminated from service. She would further submit that the second respondent's husband had involved himself in various similar mis-conducts and was also awarded punishments on 19 occasions and



therefore, the Labour Court ought not to have ordered for compensation.

4.A perusal of the Award passed by the Labour Court reveals that the Labour Court had placed reliance on various decisions of the Hon'ble Supreme Court and had held that there was a duty cast on the Corporation to establish the concept of wilful absence in all cases of un-authorised absence. Hence, this Court had reiterated this aspect on various occasions. A mere un-authorised absence alone may not suffice for the authorities to impose an act of mis-conduct, unless such absence is established to be "wilful" in nature. The Labour Court found that the aspect of "wilful" absence has not been established at all and by placing reliance on the decisions of the Hon'ble Supreme Court in this regard, the Claim Petition came to be partly allowed. The Labour Court had also taken into account the long service rendered by the husband of the second respondent herein and thereby, awarded a compensation of Rs.5,00,000/-. This Court is of the view that such a compensation to the second respondent herein, who is a blind widow, is just and proper.



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M.S.RAMESH,J.

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5.Insofar as the previous antecedents pointed out by the learned counsel for the petitioner is concerned, the same may not have a bearing on an Award of this nature, whereby the legal requirement of establishing wilful absence has not been addressed.

6.In the light of the above findings, no interference is required in the impugned order. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected M.P. is closed.

7.In view of the dismissal of the writ petition, the second respondent is at liberty to make an application before the first respondent Labour Court, seeking for withdrawal of the sum of Rs.5,00,000/-, lying in deposit on the file of I.D. No.219 of 2000. On receipt of such application, the Labour Court shall endeavour to pass orders, disbursing the entire amount to the second respondent, preferably on the same day of the application.

11.10.2022

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To
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