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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.29189 OF 2013

M.Patrick

... Petitioner

Vs.

1. The Presiding Officer
II Additional Labour Court
Chennai.
2. The Management of
Metropolitan Transport Corporation Ltd.
Pallavan Illam, Anna Salai
Chennai 600 002.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for records from the first respondent relating to the impugned award dated 28.09.2012 in I.D.No.815 of 2001 and quash only that portion of the award denying reinstatement with continuity of service, backwages and all other attendant benefits and awarding compensation of Rs.3,00,000/- of lieu of reinstatement and consequently, direct the second respondent to reinstate the petitioner in service with full backwages, continuity of service and other attendant service benefits and award cost.

For Petitioner	:	Mr.S.Ravi
For Respondents	:	Mr.K.Murthy for respondent 2

R1 - Court

ORDER

The petitioner herein, while serving as an Assistant Tradesman in the second respondent Corporation, was levelled with charges of unauthorised absence through a charge memo dated 05.04.1997 alleging that the petitioner was unauthorisedly



absent from 13.03.1997 onwards. Not being satisfied with the petitioner's explanation to the charge memo, a domestic enquiry was conducted and by an order dated 19.01.1999, the petitioner's services were terminated.

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2. A challenge to the termination order before the II Additional Labour Court, Chennai in I.D.No.815 of 2001 was partially allowed by directing the second respondent Corporation to pay a sum of Rs.3 lakh as compensation, in lieu of reinstatement into service. Aggrieved against this award, the present petition has been filed.

3. It is settled proposition that the Labour Court would be well within its powers to order compensation in lieu of reinstatement in cases where the Court is of the view that reinstatement could not be justified. However, such order of compensation should be based on justifiable grounds and the Labour Court is required to render its findings as to why compensation should be ordered instead of reinstatement. This proposition has been reiterated by the Supreme Court of India in the case of Tapash Kumar Paul v. BSNL [2015 AIR (SC) 357], in the following manner:

"3. It is no doubt true that a Court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds viz. (i) where the industry is closed; (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and/or (iv) when he has lost confidence of the Management to discharge duties. What is sought to be emphasised is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons indicating why the order of reinstatement should be allowed to be substituted by award of compensation."

4. By applying the principles laid down in the aforesaid decision, the Labour Court is required to substantiate as to why the Court was of the view that compensation should be ordered in lieu of reinstatement. In the instant case, though the Labour Court had rendered findings stating that the materials on record and the evidence of the parties disclose that the petitioner had submitted a leave letter for the absence period along with a medical certificate and therefore, the order of dismissal was



in-appropriate and had further found that the punishment was disproportionate to the charge of misconduct of the petitioner, the Labour Court had set aside the dismissal order, however had directed to pay compensation of Rs.3 lakh in lieu of reinstatement in service, without any discussion at all. Such a direction for payment of compensation is opposed to the legal proposition as held in the case of Tapash Kumar Paul (supra).

5. In the case of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) [2013 (10) SCC 324], the Hon'ble Supreme Court had held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The relevant portion of the order reads thus:

"38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages."

6. Likewise, in Raj Kumar Dixit v. Vijay Kumar Gauri Shanker, Kanpur Nagar [2015 (9) SCC 345], the Hon'ble Supreme Court had held that once the termination is held to be bad in law, compensation in lieu of reinstatement is impermissible and that such a workman will be entitled to all the benefits. The relevant portion of the order reads as follows:

"19. Awarding compensation to an amount of Rs. 2 lakhs to the workman by the High Court in lieu of reinstatement of the appellant-workman along with 50% back wages is once again contrary to the well settled principles of law as has been laid down by this Court in a catena of cases, particularly, the case of Punjab Land Development and Reclamation Corporation. Ltd. v. Presiding Officer, Labour Court, wherein the Constitution Bench held that the order of termination



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9. The writ petition is allowed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Presiding Officer
II Additional Labour Court, Chennai.
2. The Management of
Metropolitan Transport Corporation Ltd.
Pallavan Illam, Anna Salai
Chennai 600 002.

+1cc to M/s.S.Ravi, Advocate, S.R.No.25407

W.P.No.29189 of 2013

SSV(CO)
RLP(04/05/2022)