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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.30546 OF 2013

The Managing Director,
Metropolitan Transport Corporation,
Pallavan Illam,
Chennai - 600 002.

... Petitioner

-Vs-

1. The Presiding Officer,
Principal Labour Court,
Chennai.

2. V.Murugaesan

... 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 in I.D.No.726 of 2000 dated 15.12.2008 of the 1st respondent, 1st Additional Labour Court, Chennai. and to quash the same.

For Petitioner : Mr.K.Moorthy

For R1 : Court

For R2 : Mr.R.M.D.Nasrullah
For Mr.K.V.Shanmuganathan

ORDER

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

2. The second respondent herein was employed as a Driver in the petitioner-Corporation from 12.07.1995 onwards on temporary casual basis. The charge against the petitioner is that he was responsible for causing an accident on 22.11.1997, whereby the



bus had fallen into a paddy field during heavy rain. Based on the proven charges, the second respondent herein had given his explanation. However, he was dismissed from service on 06.09.1999. In the Industrial Dispute raised by him in I.D.No.726 of 2000 before the Principal Labour Court, Chennai, the dismissal order was set aside and the petitioner-Corporation was directed to reinstate the second respondent into service, together with continuity of service, back wages and all other attendant benefits. The award of the Labour Court is put under challenge in the present writ petition.

3. The learned counsel for the petitioner submitted that the second respondent herein was only a temporary casual workman and that he had not completed 240 days in 12 continuous calendar months and therefore, he was not entitled to raise a dispute before the Labour Court. It is his further submission that the second respondent was never placed under suspension and therefore, the Labour Court ought not to have found that he is entitled for subsistence allowance.

4. On the contrary, the learned counsel for the second respondent submitted that the second respondent had completed 240 days, which is also the finding of the Labour Court. The learned counsel also denied that he was not placed under suspension and that he was entitled for subsistence allowance.

5. I have given careful consideration to the submissions made by the respective counsels.

6. Insofar as the first ground raised by the learned counsel for the petitioner is concerned, such an objection was not raised before the Labour Court. The counter affidavit filed by the petitioner-Corporation before the Labour Court has not even referred to the fact that the second respondent was employed on temporary casual basis. This apart, the Labour Regulations does not differentiate the temporary workman from a permanent workman. When it is admitted by the petitioner that he was absorbed in service on 12.07.1995 and the accident had occurred on 22.11.1997, the Labour Court had rendered a finding by stating that the second respondent had completed 240 days, which aspect was not denied by the petitioner-Corporation, the first ground raised by the learned counsel for the petitioner, cannot be sustained.

7. Insofar as the claim of the second respondent for subsistence allowance is concerned, the petitioner-Corporation had taken a specific stand in the counter, as well as before the Labour Court, that the second respondent was never placed under suspension. The second respondent also affirms that no order of suspension was received by him, but claims that he was not given



duty, which claim is also not denied by the petitioner-Corporation. The Labour Court, however, without rendering any finding as to whether the second respondent was placed under suspension or not, had relied upon certain decisions of this Court, as well as the Hon'ble Supreme Court, and held that the petitioner would be entitled for subsistence allowance. A perusal of the award reveals that no finding was rendered with regard to the management's claim that the second respondent was placed under suspension. Without rendering a finding that the second respondent was placed under suspension, the consequential finding that he would be entitled for subsistence allowance cannot be sustained. In this aspect, the petitioner is entitled to succeed.

8. When the charge against the second respondent has been proved during the enquiry and the enquiry was also held in a fair and proper manner, the Labour Court had placed reliance on the materials on record and had come to the conclusion that the order of termination was illegal, it had rightly ordered for reinstatement of the second respondent into service. The Hon'ble Supreme Court, in the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others reported in 2013 (10) SCC 324, has held that in cases of wrongful termination, the concerned workman would be entitled for full back wages. In this background, the grant of full back wages to the second respondent cannot be found fault with.

9. In the result, the award, insofar as it orders for reinstatement of the second respondent into service with back wages, continuity of service and all other attendant benefits, is confirmed. The finding that the second respondent would be entitled for subsistence allowance for the alleged suspension period, is quashed. Accordingly, the Writ Petition stands ordered. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Presiding Officer,
Principal Labour Court,
Chennai.



2. The Managing Director,
Metropolitan Transport Corporation,
Pallavan Illam,
Chennai - 600 002.

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NRL (CO)
PBS/27/04/2022