



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.20009 & 23174 of 2014
and M.P.No.1 of 2014

E.Perumal ..Petitioner in WP.No.20009/2014

The Management,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai - 600 002.

..Petitioner in WP.No.23174/2014

Vs.

1.The Presiding Officer,
II Additional Labour Court,
Chennai - 2.

2.The Management,
Metropolitan Transport Corporation Ltd.,
Rep.by its Managing Director,
Pallavan House, Pallavan Salai,
Chennai -2.

..Respondents in WP.No.20009/2014

1.E.Perumal

2.The Presiding Officer,
II Additional Labour Court,
City Civil Court Annexure Buildings,
High Court Compound,
Chennai - 600 104.

..Respondents in WP.No.23174/2014

Prayer in WP.No.20009/2014 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, after calling for the records pertaining to the award dated 29.05.2013 in I.D.No.403/2009 passed by the 1st respondent, quash the same in so far as depriving the petitioner 60% backwages and consequently direct the 2nd respondent to pay the petitioner 60% backwages in addition to the relief already granted by the 1st respondent in the award, award costs.



Prayer in WP.No.23174/2014 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the award dated 29.05.2013 in I.D.No.403/2009 on the file of the 2nd respondent herein and quash the same.

In WP.No.20009 of 2014:

For Petitioner : Mr.Ajoy Khose
For R1 : Court
For R2 : Mr.M.Chidambaram

In WP.No.23174 of 2014:

For Petitioner : Mr.M.Chidambaram
For R1 : Mr.Ajoy Khose
For R2 : Court

COMMON ORDER

Alleging that the petitioner/workman was unauthorisedly absent for more than eight days from 26.05.2007, the respondent/Management had terminated the workman from service, without holding an enquiry. Aggrieved against the order of termination, the workman had raised an Industrial Dispute in I.D.No.403 of 2009 and by an award dated 29.05.2013, the II Additional Labour Court, Chennai, had ordered for reinstatement with continuity of service, but had restricted the back wages to 40%. Aggrieved against this Award, both the respondent/Management as well as the petitioner/workman have preferred the present writ petitions.

2. For the sake of convenience, parties herein are referred to as 'Management' and 'workman'.

3. The learned counsel for the petitioner submitted that since the workman was terminated from the service without holding an enquiry, there is no infirmity in the award of the Labour Court, ordering for reinstatement with continuity of service. However, the learned counsel submitted that denial of 60% of the back wages was without any reasoning or justification and therefore, sought for interference. Per contra, the learned counsel for the respondent/Management submitted that earlier the workman herein, had indulged in misconduct of unauthorised absence and even though he was reinstated back into service, he still remains absent unauthorisedly and therefore, the Management had terminated him from service, which punishment is



proportionate to the levelled charges. In view of his unauthorised absence, the Labour Court ought not to have awarded any back wages at all and therefore, the workman's claim for the remaining 60% of the back wages, does not require interference.

WEB COPY

4. Admittedly, the workman was terminated from service, without conducting an enquiry. When the petitioner is workman under the Management Corporation and when any misconduct is levelled against such a workman by way of a charge memo, there is a duty cast on the Management to adhere to the procedure under Section 25-F of the Industrial Disputes Act, 1947. Failure to do so, would render the consequential punishment invalid. This proposition has been reiterated in various decisions including the decision relied upon by the learned counsel for the workman, in the case of M.C.D. vs. Praveen Kumar Jain and others reported in (1998) 9 SCC 468, which reads as follows:

"..... 1. In our view, an impossible situation has been created for the appellant. Learned counsel for the appellant was right when he contended that in the statement of Respondent 1 recorded in the preliminary enquiry he had clearly admitted that he had typed only seven names of persons eligible for being regularised and the additional two names of Mahender Kumar and himself were not typed by him. This showed that Mahender Kumar had got these two names inserted and if the benefit of the name of Respondent 1 was to accrue on account of such interpolation, on broad probabilities Respondent 1 could be said to have colluded with Mahender Kumar and got his name inserted through his agency at least and therefore for such misconduct he was required to be suitably dealt with. Unfortunately, for the appellant the impugned order of termination extracted above does not show that it was passed after a departmental enquiry wherein the disciplinary authority was satisfied about the said misconduct. On the contrary, it seeks to terminate the services of Respondent 1 by way of a simple discharge and not by way of any penalty. It is only during the proceedings before the Labour Court that a different stand was taken that it was by way of penalty. This stand was obviously taken by the appellant because the order of simpliciter termination would have remained stillborn as Section 25F of the Industrial Disputes Act was admittedly not complied with by the appellant. With this difficulty staring in the face, a stand was taken that it was by way of penalty. If it was by way of penalty then at least a regular departmental



WEB COPY

enquiry had to be conducted. It was also required to be followed by the enquiry officer's report resulting in adverse finding against Respondent 1 and its acceptance by the disciplinary authority. Nothing of this sort was done. There is neither the enquiry officer's report holding Respondent 1 guilty of charge which in fact was never framed against him nor is there any acceptance of such a finding of the enquiry officer by the disciplinary authority. In fact the disciplinary authority has never held Respondent 1 guilty of any charge of misconduct. It is also interesting to note that while challenging the award of the Labour Court in writ petition the appellant clearly stated in para 3 of the writ petition that since Respondent 1 and Shri Mahender Kumar were merely on casual engagement/muster-roll employees and were not regular employees of the petitioner-Corporation or that of DDA, they were not entitled to a departmental inquiry as is required for the regular employees of the petitioner-Corporation. As such a stand was taken, it is obvious that the termination order based on misconduct is not the result of any departmental enquiry against Respondent 1. Consequently, the impugned order of termination would fail even on that ground. If it is a simpliciter discharge order it is violative of Section 25F of the Industrial Disputes Act and if it is a penalty order, as contended by the appellant, it would fail on merits as not having followed the procedure of departmental enquiry. In either view of the matter, the impugned order must be held to be rightly set aside by the Labour Court and the said decision was also rightly confirmed by the High Court.

5. However, as Respondent 1 was knowing typing at the relevant time and as the order under Section 17B of the Industrial Disputes Act has been passed by this Court while admitting this appeal, we deem it fit to direct that even though Respondent 1 will be entitled to continuity of service and reinstatement in service as directed by the Labour Court, the back wages deserve to be reduced to 50% instead of cent per cent as awarded by the Labour Court. This order is passed keeping in view the salient features of this case and especially keeping in view the fact that Respondent 1 succeeds on account of the bungling on the part of the appellant."



5. The aforesaid extract is self-explanatory. As such, the order of termination, without conducting an enquiry, would be fatal to the Management.

6. In so far the denial of 60% of the backwages is concerned, in a recent decision of this Court in the case of B.Palaniswamy vs. the Presiding Officer, I Additional Labour Court, City Civil Court Campus, Chennai - 600 104, and another passed in W.P.No.11094 of 2017 dated 24.01.2022, I had placed reliance on the earlier decision of the Hon'ble Supreme Court and held that when the termination of workman is found to be illegal, full back wages requires to be ordered. The relevant paragraphs of the order reads as under:

"6. In the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others reported in 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."

7. Likewise, in Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar reported in 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 for all the benefits. The relevant portion of the order reads as follows:-



WEB COPY

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,[1] wherein the Constitution Bench held that the order of termination simpliciter has to be held bad in law for non-compliance of the mandatory requirements provided under the Act and further held that the order of termination will be rendered void-ab-initio in law and therefore, the workman is entitled for all benefits for which he is legally entitled to in law.

20. The High Court has exceeded in its jurisdiction in setting aside the Award passed by the Labour Court in awarding reinstatement of the appellant- workman in his post along with 50% back wages which is erroneous in law as the High Court has not noticed the fact that the appropriate Government has referred the dispute to the Labour Court for its adjudication on the points of dispute referred to it. Since, there was non-compliance of the mandatory requirements as provided under the provisions of the Act by the respondent- firm at the time of passing an order of termination against the appellant- workman, therefore, the same has been held to be bad in law and as such it should have awarded full back wages to the workman from the date of termination till the date of passing the Award unless the employer proves that the workman was gainfully employed during the aforesaid period which fact is neither pleaded nor proved before the Labour Court.

8. If and when the aforesaid principles laid down by the Hon'ble Supreme Court is applied to the facts in the present case, the reasoning adopted by the Labour Court in denying reinstatement and ordering for compensation, particularly, when it had categorically



established and found that the Management had not proved the misconduct of the petitioner, cannot be sustained. Rather, the appropriate award ought to have been for reinstatement with all service and monetary benefits."

WEB COPY

7. When the aforesaid proposition is applied to the facts of the present case, the Labour Court ought to have awarded full back wages, since it was specifically held that the termination of the workman, without following the procedure, was illegal. The Hon'ble Supreme Court in the case of Deepali Gundu Surwase (supra), has upheld this ratio by holding that award of full back wages would be the normal rule, when an order of dismissal is set aside on illegalities.

8. In the light of the submissions made and findings of this Court, the Writ Petition filed by the Management in W.P.No.23174 of 2014, stands dismissed. The Writ Petition filed by the Workman in W.P.No.20009 of 2014 is allowed. Consequently there shall be a direction to the Management to pay full back wages to the workman from the date of termination till the date of his superannuation. The Management is at liberty to deduct the provident fund contribution of the workman from the back wages payable to him, in accordance with the Employees' Provident Fund Scheme. No costs. Connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Pns

To

1.The Presiding Officer,
II Additional Labour Court,
Chennai - 2.

2.The Managing Director,
Management,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Pallavan Salai,
Chennai -2.



+2 Ccs to Mr.M.Chidambaram, Advocate sr 22068 & 22069

+1 CC to Mr.V.Ajoy Khose, Advocate sr 22035.

WEB COPY

W.P.Nos.20009 & 23174 of 2014

EV (CO)
SP (22/04/2022)