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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.Nos.4859 of 2014 & 8659 of 2015

W.P.No.4859 of 2014

G.Manivannan

...Petitioner

Vs.

1. The Presiding Officer
II Additional Labour Court
Chennai.
2. The Branch Manager
Metropolitan Transport Corporation
Ennore Work Depot
Chennai 600 057.
3. The General Manager (Administration)
Metropolitan Transport Corporation
Pallavan House, Anna Salai
Chennai 600 002.

...Respondents

W.P.No.8659 of 2016

The Managing Director
Metropolitan Transport Corporation
Pallavan House, Anna Salai
Chennai 600 002.

...Petitioner

Vs.

1. G.Manivannan
2. The Presiding Officer
II Additional Labour Court
Chennai.
3. The Branch Manager
Metropolitan Transport Corporation
Ennore Work Depot
Chennai 600 057.

...Respondents



PRAYER: Petitions under Article 226 of the Constitution of India praying for

(i) a writ of Certiorarified Mandamus calling for the records pertaining to the award dated 09.07.2013 passed in I.D.No.290 of 2010 and quash the portion of the award insofar as granting only 25% backwages and award full backwages and all the consequent benefits including bonus and direct the second and third respondents to reinstate the petitioner within such time as stipulated by the Court; and

(ii) a writ of Certiorari to call for the records of the second respondent made in I.D.No.290 of 2010 dated 09.07.2013 and to quash the same as illegal and as against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.V.Prakash
Senior Counsel
For Mr.K.Krishnamoorthy
(in WP No.4859 of 2014)

Mr.K.Murthy
(in WP No.8659 of 2015)

For Respondents : Mr.V.Prakash
Senior Counsel
For Mr.K.Krishnamoorthy
for respondent 1
(in WP No.8659 of 2015)

Mr.K.Murthy
For respondents 2 & 3
(in WP No.4859 of 2014)
For respondent 3
(in WP No.8659 of 2015)

COMMON ORDER

The parties in both the writ petitions are referred to as the Driver and Management Corporation, for the sake of convenience.

2. The charges against the Driver was that he was unauthorisedly absent from 03.06.2003 onwards, based on which, a charge memo came to be issued to the Driver on 23.05.2005. To the said charges, the Driver had rendered his explanations on 21.03.2006 quoting his heart ailment as the reason for his absence. However, the Management Corporation chose to conduct domestic enquiry, in which, the charges were held to be proved and consequently, the Driver was terminated from service on



30.05.2006.

3. The termination order was put under challenge before the II Additional Labour Court, Chennai in I.D.No.290 of 2010 and by an Award dated 09.07.2013, the Labour Court had ordered for reinstatement of the Driver in service in a light duty, together with continuity of service and 25% of the backwages. The Award is challenged by both the Driver and the Management Corporation, in these writ petitions

4. The learned counsel for the Management Corporation submitted that since the Driver had not given any leave application, the absence is deemed to be unauthorised and therefore, he was subjected to a domestic enquiry. It is his further submission that since the Driver had received the charge memo and the summons and had chosen not to appear for the enquiry, he was set ex parte and the charges were held to be proved and it is on this basis, the order of termination from service was passed. Since the Labour Court had not properly appreciated the findings of the Enquiry Officer and the Driver's absence during the enquiry, the award ordering for reinstatement, together with the benefits, cannot be sustained.

5. On the contrary, learned senior counsel appearing for the Driver submitted that the enquiry itself is vitiated since the Management had not served the enquiry summons on the Driver. Thus, the consequential order of termination cannot be substantiated. It is also his submission that when the Labour Court has found that the enquiry was not properly conducted and the termination itself was bad in law, the Driver would be entitled to full backwages.

6. I have given careful consideration to the submissions made by learned counsel.

7. Insofar as the service of summons is concerned, on the basis of the materials on record before it, the Labour Court found that though the charge memo was served on the Driver and the Driver had also rendered his explanation from his new address, the Enquiry Officer had chosen to send the summons to the old address which resulted in setting the Driver ex parte in the enquiry. The Labour Court has also placed reliance on the oral evidence of the Management Corporation in the cross examination that they were aware, as on 02.06.2003, that the Driver was an inpatient for heart ailment. It is on this basis, the Labour Court had placed reliance on Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and had ordered for reinstatement in a light duty. However, for denial of 75% of the backwages, no reason has been assigned by the Labour Court, in



the impugned award.

8. 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."

9. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, provides that when an employee, after acquiring disability is not suitable for the post he was holding, can be shifted to some other post with the same pay scale and service benefits.

10. In the instant case, the reason assigned by the Driver for his absence is owing to his continuous heart ailment, for which, he had been undergoing treatment.

11. Pending the writ petition, this Court, by an interim order dated 04.04.2016, ordered as follows:

"The workman is directed to appear before the Medical Board constituted in the Government General Hospital, Chennai, with a request to the Board to examine the workman's health condition and certify the nature of the work that he may be able to perform. Based on such certificate, the Management of the Corporation shall offer him the work within a period of two weeks from the date on which the medical certificate is produced by the workman. The petitioner management is not entitled to test the correctness of the certificate issued by the Medical Board and they



should accept the same for the time being till the writ petition is heard and disposed of finally."

12. Subsequently, the Driver had appeared before the Medical Board on 13.05.2016 and the Board had also opined as follows:

"As per cardiologist report the individual is fit only for light work."

13. Now that the Medical Board had opined that the Driver is fit only for light work and in view of the findings of this Court that the Driver would be entitled to reinstatement, it would be appropriate to direct the Management Corporation to assign light duty to the Driver while reinstating him back in service. Insofar as the denial of 75% back wages is concerned, the Labour Court has not assigned any reason for restricting the back wages at 25% and when the decision in Deepali Gundu Surwase (supra) has been applied to the facts of the present case, the driver would be entitled for full back wages.

14. In the light of the above discussions and findings, the impugned award, insofar as it orders for reinstatement in service, is confirmed. However, the award denying 75% of the backwages is set aside and consequently, there shall be a direction to the Management Corporation to pay the full backwages to the Driver, together with continuity of service and other attendant benefits. The Management shall pass such order of reinstatement and payment of monetary benefits, together with an order assigning him duty with light work, within a period of six weeks from the date of receipt of a copy of this order.

15. The writ petitions stand ordered accordingly. There will be no order as to costs. M.P.No.1 of 2015 in WP No.8659 of 2015 is closed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Presiding Officer
II Additional Labour Court
Chennai.



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Chennai 600 057.

WEB COPY

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Pallavan House, Anna Salai
Chennai 600 002.

+1cc to Mr.K.krishnamoorthy, Advocate, S.R.No.25575
in W.P.No.8659/2015

+1cc to Mr.K.krishnamoorthy, Advocate, S.R.No.25574
in W.P.No.4859/2014

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JPL(CO)
RGA(06/05/2022)