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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WRIT PETITION NO.21178 OF 2019

AND

WMP.NO.20381 OF 2019

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

... Petitioner

Vs.

1. The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
Teynampet, Anna Salai,
Chennai - 600 006.

2. Thiru. N.Gunasekaran,
No.71, Othavadi Pudur Veethi,
8th Street, Chennai - 600 081.

... Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the order passed in A.P.No.357 of 2012 dated 28.11.2018 on the files of the 1st respondent and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents : Mr.T.Sampath Kumar
Government Advocate [R1]

Mr.K.Malaikannu[R2]

ORDER

The prayer sought for herein is for a Writ of Certiorari, to quash the order passed in A.P.No.357 of 2012 dated 28.11.2018 on the files of the 1st respondent.



2. The second respondent was working as a Conductor at the petitioner/Management. While so, disciplinary proceedings were initiated against the second respondent by the petitioner/Management, which ultimately concluded in a punishment, under which, the second respondent was removed from service.

3. At that time since there has been a General Industrial Dispute was pending before the concerned Authority, in order to get the approval of termination under Section 33(2)(b) of the Industrial Disputes Act, 1947, an application of approval was filed by the petitioner/Management, which was considered and rejected by the Labour Commissioner concerned, as against which, the present writ petition has been filed.

4. When this writ petition is taken up for final hearing today, Mr.M.Malaikannu, learned counsel appearing for the second respondent/employee submits that, if the petitioner/Management come forward to reinstate the second respondent/employee immediately with all benefits like continuity of service and other retiral benefits, the second respondent will be ready and willing to forego the backwages for the non working period.

5. The said proposal submitted on behalf of the second respondent/employee has been readily accepted of-course on getting the instant instructions from the representative of the petitioner/Management by the learned counsel for the petitioner.

6. In that view of the matter, by recording the aforestated stand taken by the learned counsel appearing for both the parties, this Court is inclined to dispose of this Writ Petition with the following orders:

- ◆ That the petitioner is hereby directed to reinstate the second respondent forthwith with a condition that, he shall not claim any backwages for the non working period. However, the second respondent shall be entitled to get all other service benefits including the pensionary benefits with continuity of service. The salary shall be fixed on the second respondent by taking account the current rate of wages and payment. Accordingly the monthly pay shall be fixed on the second respondent.
- ◆ Insofar as the contribution to be made to the trust for getting the pension on superannuation is concerned, the employers contribution for the whole non working period shall be made by the petitioner/Management.
- ◆ It is also made clear that, for all other attendant and service benefits except backwages, the second respondent/employee on reinstatement would be entitled to get the salary at the current rate, which should be fixed



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after taking into account the periodical increment, for which, the second respondent/employee would be entitled as if he having been working all along and accordingly the said benefit shall also be extended to the second respondent/employee.

With these directions, this writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
Teynampet, Anna Salai,
Chennai - 600 006.

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.33431

+1cc to Mr.K.Malaikannu, Advocate, S.R.No.32956

W.P.No.21178 of 2019

PA(CO)
RLP(01/07/2022)