



W.P.No.10781 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATE: 07.07.2023

CORAM

HONOURABLE MRS.JUSTICE N.MALA

W.P.Nos.16293 of 2010 and 23917 of 2009

W.P.No.16293 of 2010:

1.S.M.Ganesan (Deceased)

2.G.Kalavathi

3.G.Manivannan

4.R.Nirmala Sundari

5.G.Thrilokachandran

6.G.Thiagarajan

....Petitioners

Vs.

1.The Management of Metropolitan
Transport Corporation,
Chennai (Division-II) Limited,
Pallavan Salai, Chennai – 600 002.

2.The Principal Labour Court,
Chennai.

.. Respondents

(Petitioners 2 to 6 substituted as legal heirs of the deceased first petitioner vide order dated 29.01.2014 in M.P.No.2 of 2013 in W.P.No.16293 of 2010)



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W.P.No.23917 of 2009:

The Management of Metropolitan
Transport Corporation,
Chennai (Division-II) Limited,
Pallavan Salai, Chennai – 600 002.

.. Petitioner

Vs.

1.S.M.Ganesan (Deceased)

2.The Principal Labour Court,
Chennai-600 104.

3.G.Kalavathi

4.G.Manivannan

5.R.Nirmala Sundari

6.G.Thrilokachandran

7.G.Thiagarajan .. Respondents
(R3 to R7 impleaded as per order dated 17.01.2014 in MP.No.02 of 2013 in
W.P.No.23917 of 2009)

Prayer in W.P.No.16293 of 2010:

Writ Petition filed under Article 226 of the Constitution of India to
issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the
records on the file of the second respondent in connection with the
award dated 28.03.2008 passed in I.D.No.833 of 2001 and quash the
same to the extent of denial of back wages alone and further direct the
first respondent to pay all back wages till the date of superannuation.



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Prayer in W.P.No.23917 of 2009:

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Writ Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI to call for the records pertaining to the award dated 28.03.2008 passed in I.D.No.833 of 2001 on the file of the second respondent herein and quash the same.

W.P.No.16293 of 2010:

For Petitioners : Mr.J.Shanmuga Sundarababu

For R1 : Mr.M.Chidambaram

W.P.No.23917 of 2009:

For Petitioner : Mr.M.Chidambaram

For RR3 to 7 : Mr.J.Shanmuga Sundarababu

COMMON ORDER

The writ petition in W.P.No.23917 of 2009 is filed by the Management of Metropolitan Transport Corporation, Chennai Division-II challenging the award of the Labour Court passed in I.D.No.833 of 2001.

2. The writ petition in W.P.No.16293 of 2010 is filed by the worker (since deceased) challenging the award of the Labour Court in I.D.No.833 of 2001 in so far as it relates to denial of backwages.



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3. As both these writ petitions are filed challenging the Award passed in I.D.No.833 of 2001, they are disposed of by this common order.

4. The deceased workman joined the Transport Corporation as driver in the year 1970 and thereafter he was transferred to Pallavan Transport Corporation, which was subsequently renamed as M.T.C Division II. While the workman was working in Perambur Depot, which was under the control of respondent Management, he was issued with a charge memo dated 11.05.1995 for unauthorised absence from duty since 04.10.1994. The workman gave his explanation on 13.05.1995 denying the charges. Thereafter domestic enquiry was conducted and the enquiry officer found that the charges against the workman were proved. On the basis of the findings of the enquiry officer, the respondent Management dismissed the workman from service on 18.11.1995. As the appeal preferred by the workman was not taken up by the Appellate Authority, the workman raised a dispute before the Labour Court challenging the dismissal order.

5. The Management/Transport Corporation filed detailed counter denying all the claim averments. According to the management, the



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petitioner had absented himself unauthorisedly from 04.10.1994. The petitioner was issued with a charge memo on 15.02.1995 and as the said charge memo was not duly served, the management sent a memo on 05.04.1995 to the workman's residential address directing him to appear before the Medical Officer, as his medical leave was rejected for want of the supporting medical records. The petitioner neither appeared before the medical officer nor reported for duty. Thereafter a remainder memo was issued on 28.04.1995 and as the workman failed to comply with the direction, a fresh charge memo was issued on 11.05.1995 to the workman. As the explanation of the workman was found to be unsatisfactory, a domestic enquiry was conducted. The enquiry officer held that all the charges were proved. Based on the enquiry report, a second show cause notice was sent to the workman, to which he sent a explanation which was found to be unacceptable and therefore the petitioner was dismissed from service on 18.11.1995.

6. Before the Labour Court, no oral evidence was adduced by both sides. 12 documents were filed on the side of the workman as Ex.W.1 to Ex.W.12 and 21 documents were filed on the side of the respondent Management as Ex.M.1 to Ex.M.21. The Labour Court on the basis of



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entire evidence on record found that the finding of the enquiry officer was perverse and set aside the charges as unproved.

7. As the workman attained superannuation, the Labour Court found that an order of reinstatement could not be passed. The Labour Court therefore passed an award directing payment of all retirement benefits including pension along with continuity of service, as if the petitioner had been in service continuously without any break till the date of superannuation. As far as backwages are concerned, the Labour Court declined the relief. Aggrieved by the order of Labour Court both the management and the workman have filed the above writ petitions.

8. It is seen that initially a charge memo was issued to the petitioner/workman on 15.02.1995. It is seen that the enquiry initiated on the first charge memo for unauthorised leave without intimation was kept in abeyance in view of the submission of the workman that he had sent leave request to the branch manager. While the said enquiry was kept pending, the management directed the petitioner to appear before the Medical Officer, Ayanavaram depot by its letter dated 28.04.1995. As



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the petitioner failed to comply with the aforesaid letter, the petitioner was issued with the charge memo with same set of charges as earlier found in the charge memo. The charges read as follows:

"1) Mr.Ganesh, Driver had not attended duty without any prior intimation or prior permission from 4.10.94 and thus he has committed the irregularity under Standing Order no.16(E).

2) By absenting himself often, prejudice has caused hindrance to the Corporation which is irregularity under Standing Order No.16(G)."

The charges in the first charge memo were repeated verbatim in the second fresh charge memo. During the enquiry, under the second charge memo, the petitioner examined himself and categorically stated that he could not attend duty from 04.10.1994 because of his ill health and that he had sent the leave application to the branch manager, who had suppressed the same while sending his report to the head office. The workman further stated that he had also sent a reply to the authorities explaining his inability to appear before the Medical Officer as per direction of the management. It seems that the management did not cross examine the workman on his statements made during his examination. The management though stated that the workman had not



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applied for leave along with medical certificates, nevertheless produced the medical certificates as documents during enquiry. The management witness in cross-examination admitted the leave letters for medical leave from 04.10.1994 to 06.03.1995. Further the statement of the workman that he had obtained leave was not denied in the counter to the claim petition nor was the petitioner cross examined on the aforesaid claim. I am therefore of the view that the Labour Court was justified in its finding that the charges were not proved. As I find no perversity in the factual findings of the Labour Court, the same are not interfered with.

9. During the pendency of the proceedings the workman attained superannuation, hence the question of reinstatement does not arise. As the finding of the Labour Court that the charges were not proved is confirmed by this Court, the order passed by the Labour Court directing the management to disburse all retirement benefits including pension as if the petitioner was in service without any break till superannuation but without backwages is confirmed. It is by now fairly settled that payment of backwages is not automatic and it has to be decided on the facts of the case. In the present case the workman has not raised any plea about his



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gainful non employment during the period he was out of service. Initial burden is on the workman to show that he was not gainfully employed.

In the instant case as the workman had neither pleaded nor placed any material to establish that he was not gainfully employed, the Labour Court is justified in denying backwages. Useful reference in this regard can be made to the Judgment of the Hon'ble Supreme Court in the case of *K.K.Synthetics Ltd. vs. K.P.Agrawal and another* reported in 2007 (2) SCC 433. Therefore under the facts and circumstances of this case, I find that the denial of backwages to the workman is justified and the same does not call for any interference.

In the result the writ petition filed by both the management in W.P.No.23917 of 2009 as well as the workman in W.P.No.16293 of 2010 are dismissed. There shall be no order as to costs.

07.07.2023

Index:Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

dsn



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To
The Principal Labour Court,
Chennai.



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N.MALA.,J.

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