



W.P.No.22580 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 22580 of 2015

and

M.P.No.1 of 2015

The Management, rep by its
The General Manager,
Integral Coach Factory,
Southern Railway,
Chennai – 600 003.

.... Petitioner

Vs

1.Abishek Kumar Thakur

2. The Presiding Officer,
Central Government Industrial Tribunal-
cum-Labour Court, Chennai – 6

.... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in I.D.No.1 of 2014, dated 23.04.2015 on the file of the 2nd respondent and quash the same.



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For Petitioner : Mr.P.T.Ram Kumar

For R1 : Mr.R.Lawrence

For R2 : Tribunal

ORDER

This Writ Petition has been filed as against the Award dated 23.04.2015 passed in I.D.No.1 of 2014 by the second respondent, thereby ordered to reinstate the first respondent into service with 50% back wages, continuity of service and other attendant benefits.

2. The first respondent shall be herein after called as “workman”.

The petitioner shall be herein after called as “Management”.

3. The workmen had entered into service as Lascar on 21.08.2007 under the Souther Railway. He was transferred to Indian Coach Factory in June 2009 and he was posted as Lascar in Chief Engineer's Bungalow. He was served with charge memo alleging that he was unauthorisedly absent for duty from 16.12.2010 to 22.02.2011. For the show cause notice, he



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replied and without satisfaction of his explanation, an enquiry was conducted. The Enquiry Officer concluded that the charge was proved. On the strength of the enquiry report, he was removed from service from 07.10.2011. Aggrieved by the same, the workmen filed revision and the same was also rejected.

4. Though the workmen submitted a detailed explanation with hospital records for his absence, it was not considered by the Disciplinary Authority. According to the workmen, he was ill and for this reason he could not attend to do work during the period of absence. Ex.M5 revealed that the Chief Engineer has been ratifying the leave of the workmen as leave without pay through the letter addressed to the Bill Section. As per the advise rendered by the Railway Rates Tribunal, it was directed to ratify the absence for the period from 16.12.2010 to 24.12.2010, 16.12.2010 to 05.01.2011, 16.12.2010 to 19.01.2011 and 16.12.2010 to 15.02.2011 respectively. However, it was not considered in the revision on the ground that the order of Railway Rates Tribunal is only advisory in nature. The



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ratification of the leave “as leave without pay” is only to keep the records straight and will not absolve the workmen of his guilt.

5. Even assuming that the absence of the workmen was unauthorised one, the punishment of removal from service is disproportionate to the charges. He was absented only for 69 days that too on the ground of illness. Therefore, it does not amount to misconduct and the second respondent rightly ordered to reinstate the workmen in service with 50% of back wages, continuity of service and other attendant benefits.

6. While pending Writ Petition, the workman filed Miscellaneous Petition before this Court in M.P.No.2 of 2015 claiming benefits under Section 17(B) of the Industrial Disputes Act 1947. This Court, by an order dated 21.03.2016, allowed the miscellaneous petition and thereby directed the Management to pay the last drawn wages from July 2015 and continue to pay the same till the disposal of the writ petition. Accordingly, the



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Management is paying the workman last drawn wages from the month of July 2015 till now. Therefore, the learned counsel for the petitioner submitted that the workman has been receiving his last drawn wages. It would amount to more than 50% of the back wages. Therefore, he prayed to modify the award without back wages and on condition that the Management is ready to reinstate the workmen forthwith. Only after the interim direction issued by this Court, the Management has been paying the workmen last drawn wages i.e, from July 2015. However, the workmen was not paid any back wages from the date of his removal from service i.e., on 07.10.2011 till June 2015.

7. Considering the above facts and circumstances of the case, the Award dated 23.04.2015 passed in I.D.No.1 of 2014 by the second respondent is modified to the effect that the petitioner Management is directed to reinstate the workman forthwith. The workman is directed to join duty with the petitioner Management forthwith. The petitioner Management is directed to pay the arrears of 25% of back wages for the



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interregnum period from 07.10.2011 to June 2015. The Management is directed to comply with the order dated 20.01.2016 passed in M.P.No.2 of 2015 till the workman is reinstated into service.

8. With the above direction, this Writ Petition stands disposed of.

Consequently connected miscellaneous petition is closed. No costs.

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Index:Yes/No
Internet:Yes/No

To

The Presiding Officer,
I Additional Labour Court,
City Civil Court Buildings,
Chennai – 600 104.



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G.K.ILANTHIRAIYAN,J.

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