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W.P.No.19383 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19383 of 2016

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

2.The General Manager,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Illam,
Anna Salai,
Chennai – 600 002.

... Petitioners

Vs.

1.M.D.Ulaganathan

2.The Presiding Officer,
III Additional Labour Court,
City Civil Court Annexure Building,
High Court Compound,
Chennai – 600 104.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the order passed in I.D.No.56 of 2012 dated 15.02.2016 on the file of the second respondent herein and quash the same.



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For Petitioners : Mr.M.Chidambaram
For Respondents : Mr.S.T.Varadharajulu for R1

ORDER

The petitioners have filed this writ petition seeking issuance of Writ of Certiorari calling for the records pertaining to the order passed in I.D.No.56 of 2012 dated 15.02.2016 on the file of the second respondent and quash the same.

2.The case of the petitioners is that the first respondent was appointed as Conductor in the petitioner Corporation on 27.07.1992. On 02.01.2008, when the first respondent was the Conductor of the bus Route No.17M, checking squad boarded the bus and checked the tickets and it was found that the first respondent was having 68 sold tickets in his cash bag; stage note was wrongly punched and tickets and money were not tallied and hence, the first respondent violated Sections 25(XLi)(c), 25(XLi)(f), 25(XLI) and 25(XIV) of the Certified Standing Order. Thereafter based on the checking squad's report, the first respondent was suspended from service on 08.01.2008 and charge memo was issued to him on 18.02.2008 and enquiry was conducted.



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3.The further case of the petitioners is that after detailed enquiry, the first respondent was terminated from service by the second petitioner on 03.01.2009. Challenging the same, the first respondent filed W.P.1404 of 2009 and this Court vide order dated 27.01.2009 dismissed the said writ petition. Thereafter, the first respondent filed Department Appeal challenging the termination order and the same was also dismissed. Aggrieved by the same, the first respondent filed W.P.No.13586 of 2010 and this Court vide order dated 09.01.2012 dismissed the writ petition and directed the first respondent to approach the Labour Court. Thereafter, the first respondent raised I.D.No.56 of 2012 before the second respondent, pursuant to which, the impugned award directing the petitioners to reinstate the first respondent in service with backwage and all other consequential monetary benefits, came to be passed. Hence, this writ petition.

4.The learned counsel appearing for the petitioners submitted that the first respondent was appointed as Conductor in the petitioner Corporation on 27.07.1992. On 02.01.2008, when the first respondent was the Conductor of the bus Route No.17M, checking squad boarded the bus and checked the tickets and it was found that



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the first respondent was having 68 sold tickets in his cash bag; stage note was wrongly punched and tickets and money were not tallied. Thereafter, based on the checking squad's report, the first respondent was suspended from service on 08.01.2008 and after conducting detailed enquiry, the first respondent was terminated from service by the second petitioner on 03.01.2009. However, all these aspects were not properly considered by the Labour Court and the Labour Court mechanically passed the impugned order which is not sustainable one.

5.The learned counsel appearing for the first respondent submitted that on the side of the petitioners, one TH.P.Muthuvel was examined as M.W.1 before the Labour Court and he has deposed that the tickets were collected from persons who had travelled from Porur to Broadway which is contrary to the charge memo according to which, the first respondent was found in possession of 68 sold tickets in his cash bag and taking into consideration the above contradiction, the Labour Court passed the award in favour of the first respondent which cannot be interfered with. He further submitted that the facts appreciated by the Labour Court cannot be re-appreciated by this Court under Article 226 of the Constitution of India. He further



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submitted that the first respondent attained the age of superannuation during the year 2016.

6. Heard the arguments advanced on either side and perused the materials available on record.

7. The facts in the present case is not in dispute. Admittedly, the first respondent was appointed as Conductor in the petitioner Corporation on 27.07.1992. On 02.01.2008, when the first respondent was the Conductor of the bus Route No.17M, checking squad boarded the bus and checked the tickets and it was found that the first respondent was having 68 sold tickets in his cash bag; stage note was wrongly punched and tickets and money were not tallied. Thereafter, based on the checking squad's report, the first respondent was suspended from service on 08.01.2008 and after conducting detailed enquiry, the first respondent was terminated from service by the second petitioner on 03.01.2009. Thereafter, the first respondent raised I.D.No.56 of 2012 before the second respondent.

8. Before the Labour Court, the Workman has examined himself as W.W.1 and also examined two other witnesses W.W.2 and W.W.3



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and marked eight exhibits Ex.W1 to Ex.W8. On the side of Management, one witness was examined as M.W.1 and exhibits Ex.M1 to Ex.M9 have been marked.

9.M.W.1 examined on the side of the Management has deposed before the Labour Court that the tickets were collected from persons who travelled from Porur to Broadway which is contrary to the charge memo, according to which, the first respondent was found in possession of 68 sold tickets in his cash bag. The said contradiction was properly considered by the Labour Court and the Labour Court passed the award in favour of the first respondent. Since the impugned order does not suffer any perverse, the same cannot be interfered with by re-appreciating the factual finding rendered by the Labour Court.

10.The first respondent has attained the age of superannuation during the year 2016. Hence, there is no question of reinstatement. Further, the Hon'ble Apex Court as well as this Court have in a catena of judgments held that a person is not entitled for backwages for the period when he is not in employment and hence, the first respondent is not entitled for any backwages.



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11. In view of the above, this Court modifies the Award of the second respondent dated 15.02.2016 passed in I.D.No.56 of 2012 as follows:

(i) The first respondent is entitled for the all other consequential monetary benefits including continuity of service except backwages.

(ii) The first respondent is not entitled for any backwages.

(iii) Since the first respondent has attained the age of superannuation during the year 2016, there is no question of reinstatement. Hence, the petitioner is directed to settle the benefits within a period of 8 weeks, if not already settled.

12. The writ petition is disposed of on the above terms. No costs.

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1. The Presiding Officer,
III Additional Labour Court,
City Civil Court Annexure Building,
High Court Compound,
Chennai – 600 104.

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M.DHANDAPANI,J.
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