



W.P.No.32017 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	20.04.2023
PRONOUNCED ON	:	01.06.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.32017 of 2013

& M.P.No.2 of 2013

The Management of Tamil Nadu,

State Transport Corporation

Villupuram,

Kancheepuram-631 503

... Petitioner

Vs.

1.The Presiding Officer

I Additional Labour Court, Chennai.

2. V.Perumal,

Conductor, 10/A ,Kandappa Street

Ayyampettai, Kancheepuram-631 601

... Respondents

PRAYER: Writ petition filed under Article 226 of Constitution of India, praying to call for the records of the order passed by the 1st respondent in Industrial Dispute in I.D.No.15 of 2004 dated 08.02.2012 and to quash the



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same as illegal by holding that the 2nd respondent is not entitled for any backwages.

For Petitioner : Mr.M.Aswin

For R-2 : Mr.E.C.Murali

* R1 – Court

ORDER

This writ petition is filed by the Management praying to quash the Award passed in I.D.No.15 of 2004 dated 08.02.2012 by the learned Judge, I Additional Labour Court, Chennai.

2. The issue between the Management and the 2nd respondent-Workman has already been taken up before the Labour Court and the challenge made to the said Award has already been adjudicated before this court in W.P.No.3678 of 2001 and W.P.No.5752 of 2009.

3. W.P.No.3678 of 2001 has been disposed of by this Court by order dated 11.08.2008 holding that 50% backwages deposited by the management shall be withdrawn by the workman and the workman was also reinstated into service as per the award.



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4. As far as W.P.No.5752 of 2009 is concerned, the said order remanded the I.D.No.15 of 2004 into Labour Court for fresh consideration.

5. For the disposal of this writ petition, it is necessary to narrate the facts as follows:-

The 2nd respondent-workman joined the services of the petitioner Corporation in the year 1978 as a Conductor. He was dismissed from service by an order dated 27.09.1997. He raised an industrial dispute in I.D.No.484 of 1998. The Labour Court held that 2nd respondent's non-employment was not justified and therefore, directed his reinstatement with 50% backwages along with other attendant benefits.

6. As per the order of the Labour Court, 2nd respondent was reinstated by the petitioner Management in service and since they had the proposal to file Writ Petition, they did not pay backwages.

7. The petitioner Management filed W.P.No.3678 of 2001 and in the M.P. filed by the 2nd respondent, the petitioner management filed counter and



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stated that 2nd respondent was posted to Chengelpet Branch on 22.12.2000, he joined on 25.12.2000 and he absented himself from duty from 09.01.2001.

Therefore, disciplinary proceedings were taken and finally he was removed from service on 29.01.2002.

8. According to the petitioner-management, the 2nd respondent remained absent. Departmental enquiry was conducted pursuant to the charge memo dated 28.03.2001. Enquiry was conducted and a retired Civil Judge was appointed as enquiry officer. The 2nd respondent sent a telegram to the enquiry officer on 04.10.2001 and 18.9.2001 seeking for postponement of the enquiry on the ground of illness.

9. Enquiry was held ex-parte and the Enquiry Officer submitted a report dated 15.12.2001 holding the 2nd respondent was guilty of continued absence from 09.01.2001 to 03.03.2001 and because of that, the petitioner Corporation was put to irreparable loss.

10. On the basis of the enquiry report, the petitioner management gave a second show cause notice dated 28.12.2001 asking as to why he should not be removed from service. The 2nd respondent did not give any reply and



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thereafter by a final order dated 29.01.2002, the 2nd respondent was again removed from service as he had absented himself from service from 09.01.2001.

11. The 2nd respondent raised an industrial dispute before the Conciliation officer, who after mediation, gave a failure report. The 2nd respondent filed Claim Statement before the Labour Court and the said dispute was taken as I.D.No.15 of 2004.

12. The Labour Court, instead of framing preliminary issue and passing preliminary award as to the validity of the enquiry, straight away allowed the parties to lead evidence. The Labour Court referring to two questions of consideration, based on evidence, gave a finding and directed that reinstatement with service continuity and other attendant benefits. The said award was passed by the Labour Court on 21.08.2008.

13. Challenging the said award dated 21.08.2008, the petitioner management filed W.P.No.5752 of 2009. This court, observed that Labour Court should have given definite finding on the actual list between the parties



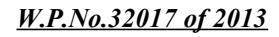
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and not take easy approach of invoking Section 11-A of the Industrial Disputes Act, as a magic one for granting relief and remitted the matter back to the Labour Court for fresh consideration and while deciding the issue afresh, the Labour Court should take note of the circumstances set out above including the precedents referred to above.

14. Thereafter, on remand the matter has been taken up by the Labour Court for fresh consideration. The Labour Court framed the following points for consideration:-

- I) Whether the alleged termination of the service of the petitioner by the management is justified?
- II) Whether the petitioner is entitled to claim reinstatement, continuity of service, backwages and other benefits?
- III) To what relief the petitioner is entitled to ?

15. The Labour Court observed that the the workman sent a letter stating that he was ill from 09.01.2001. He was permitted to join duty, however, due to illness, he sent a medical leave enclosing a medical certificate



16. The Labour Court pointed out that the respondent management was required to prove the charge of misconduct by adducing fresh evidence, but management has not come forward to prove the charge by examining the records of the respondent corporation. The learned Judge, Labour Court, held that enough reasonable opportunity was given to the management to prove the charge of misconduct, nothing proved to sustain the termination order passed



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against the workman, so the termination is not justified.

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17. The Labour Court as regards the question of as to whether the petitioner is entitled to get the relief of reinstatement with back wages, it is held that the workman reached the age of superannuation on September 2008, so the question of reinstatement will not arise, so, the petitioner is entitled to get the relief of backwages from the date of removal till his retirement.

18. The Labour Court on the basis of the evidence of the workman that he was not gainfully employed elsewhere after his termination, held that he is entitled to claim back wages from the management.

19. The Labour Court held that the respondent management in order to victimize the workman, terminated the services of the workman from 29.01.2002, so he is entitled to claim full back wages from the management.

20. On the above findings, the Labour Court passed the award on 08.02.2013 directing the management to pay full back wages from



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29.01.2002 till the date of his attainment of retirement in September 2008 with continuity of service and all other attendant benefits.

21. At the time of hearing of this writ petition, the contention of the learned counsel for the petitioner-management is that the onus is on the part of the workman to prove his innocence of his charges and no evidence adduced to support his leave, cannot be accepted by this court, since the 2nd respondent workman has marked the Medical Certificates as Ex.W.7 and leave letter sent to Branch Manager in support of his claim that he suffered illness was marked as Ex.W.4 and therefore, he applied leave, however, the management to victimize the workman terminated the workman from service and conducted enquiry and based on exparte proceedings, report was filed finding the workman, guilty of charges, consequently, passed order of dismissal.

22. In the considered opinion of this court, the award passed in I.D.No.15 of 2004 granting the relief to the workman, is based on evidence and the findings are cogent which need not be interfered by this court.



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Accordingly, this writ petition is dismissed. The petitioner-management is directed to implement the award, if not already implemented. No costs.

Consequently, connected miscellaneous petition is closed.

01.06.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
Internet : Yes/No

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To:

The Presiding Officer
I Additional Labour Court,
Chennai.



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J.NISHA BANU, J.,

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Pre-delivery Order in
W.P.No.32017 of 2013

Dated:
.06.2023