



W.P.No.27498 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.Nos.27498 of 2016

and

W.M.P.Nos.23688 of 2016

The Management
Metropolitan Transport Corporation
Chennai Ltd.,
Pallavan Illam, Anna Salai,
Chennai-2.

... Petitioner

Vs.

R.R.J.J.V.Sundar Singh (Deceased)

- 1.R.Vasanthi
2. S.V.John Vinoth
3. S.V.Jayavidhya
4. Mary Ratna Bai

5. The Presiding Officer,
I Additional Labour Court,
City Civil court Annexure Building,
High Court compound,
Chennai-104.

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records pertaining to the order passed in ID No.838 of 1998 dated 17.08.2004 on the file of the 5th respondent herein and quash the same.



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WEB COPY For Petitioner : Mr.M.Chidambaram
For Respondents : Ms.Nandhini.H. RR1 to 4

ORDER

The petition has been filed seeking to quash the award in ID No.838 of 1998 dated 17.08.2004 on the file of the 5th respondent herein.

2. It is the case of the petitioner Corporation that the petitioner Corporation is a public sector undertaking. One Sundar Singh was appointed as Driver at Salem. Subsequently, at request of the said Sundar Singh, who was transferred to Chrompet Department. Such being the position, the said Sundar was absent from 06.06.1994. Due to which, the petitioner Corporation issued charge memo on 29.10.1994. Based upon the explanation, the said employee was posted at Thiruvanmiyur Depot. Even after the transfer, the employee failed to attend the duty. Thereafter, an enquiry was ordered and was levelled charges against him and the charges were proved and therefore, he was terminated from service on 04.12.1998. Against the termination order, the employee raised an ID. No.838 of 1998 before the I Additional Labour Court, Chennai. Pending ID., the said employee died on 25.03.2003. Without knowledge of his death, an award was passed on the death person directed the



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employee with continuity of service, full back wages and all other attendant benefits. Challenging the same, the petitioner Corporation has filed the present writ petition before this Court.

3. The learned counsel for the petitioner submitted that once the employee himself admitted the charges, he may not be eligible to receive the full wages and other benefits in the non-employment period. The Labour Court has failed and neglected to appreciate the oral and documentary evidence in proper and prospective manner. Therefore, this Court may set aside the award passed by the 5th respondent and allow this petition.

4. The learned counsel for the respondents 1 to 4 submitted that though the death of the person has not intimated to the Court, however, the Labour Court passed an award in favour of the deceased person. The deceased Sundar Singh has filed his explanation before the Enquiry Officer. However, the petitioner Management has not marked the said explanation before the Labour Court. Due to ill health, the said deceased was absent. Therefore, the Labour Court has rightly passed an award, which cannot be interfered with.



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5. Heard the learned counsel for the petitioner and the learned Counsel for the respondents 1 to 4 and perused the materials available on record.

6. The facts of the case are not in dispute. Admittedly, the said Sundar Singh was entered into service to the petitioner Corporation. During his employment, he was removed from service for unauthorized absent, for which, he approached the Labour Court. The Labour Court passed an order in favour of the deceased Sundar Singh, without knowing the death of the deceased.

7. It the case of the deceased respondent referring to unauthorized absent, the Enquiry Officer stated that the allegation has been proved against the deceased without considering his reply and evidence. Such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different situations beyond his control like illness, accident, hospitalization etc., but in such case, the employee cannot be held guilty of failure of duty. In a departmental proceedings, if allegation of unauthorized absence from the duty is made, the enquiry officer is required to prove that the absence is willful, in the absence of such finding, the absence



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will not amount to misconduct.

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8. In the present case, the deceased respondent submitted his explanation before the enquiry officer stating that due to chest pain, he could not attend duty and he has also produced the doctor certificate. Without considering the fact, the enquiry officer has come to the conclusion, which is not sustainable one. However, the Labour Court has arrived at a conclusion that the deceased respondent is entitled to reinstatement with continuity of service, full backwages and all other terminal benefits and directed the petitioner herein to reinstate the employee with continuity of service, full back wages and all other attendant benefits.

9. Now the question arises in the present case is whether the legal heirs of the deceased is entitled for continuity of service or not. There is no legal impediment for extending the benefit of continuity of service in favour of the legal heirs. However, when the persons is not in employment and the said person is died during pendency of the proceedings, whether the legal heirs are entitled for 100% back wages. However, in order to resolve the dispute, this Court is inclined to extend the benefit of 25% back wages to the legal heirs of



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the deceased Sundar Singh.

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10. In view of the above, this Court modifies the award as follows:

1. The petitioner Corporation is directed to pay at 25% of the back wages from the date of dismissal to till the death of the workman to the legal heirs of the deceased respondent within a period of four weeks from the date of receipt of a copy of this order; and

2. Further the petitioner Corporation is directed pay the terminal benefits and other benefits with continuity of service to the legal heirs from the date of dismissal to till the death of the workman within a period twelve weeks from the date of receipt of a copy of this order."

11. With the above directions, the writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is also closed.

10.07.2023

Index : Yes / No

Speaking order / Non speaking order

Netrual Citation Case : Yes / No

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M.DHANDAPANI, J.

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To

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