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W.P.No.28193 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.28193 of 2016

And

W.M.P.No.24330 of 2016

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

... Petitioner

Vs.

1.M.Abdul Latheif

2.The Presiding Officer,
I 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.100 of 2011 dated 22.02.2016 on the file second respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram
For Respondents : Mr.S.Vediappan for R1



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ORDER

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The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records pertaining to the order passed in I.D.No.100 of 2011 dated 22.02.2016 on the file second respondent and quash the same.

2.The case of the petitioner is that the first respondent was appointed as Driver in the petitioner Corporation during the year 1996. The first respondent was a habitual absentee and he was terminated from service on 30.05.2006. Challenging the same, the first respondent filed application before the Conciliation Officer and since the conciliation efforts failed, he raised industrial disputes before the second respondent in I.D.No.100 of 2011. The second respondent passed award directing the petitioner to notionally reinstate the first respondent and to pay 30% of backwages and all other attendant benefits to the first respondent from the date of dismissal till the date of superannuation and further directed that the petitioner shall also pay terminal benefits to the first respondent. Challenging the same, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner submitted



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that the first respondent un-authorisedly absented himself from duty for nearly 170 days during the period from 11.12.2004 to 30.05.2006. Since he was a habitual absentee he was terminated from service on 30.05.2006 without conducting any enquiry on the ground that the first respondent was already terminated from service twice and was punished 9 times for various misconducts.

4.The learned counsel appearing for the first respondent submitted that though the first respondent was terminated from service twice prior to this termination order, those termination orders were set aside by the competent forum. The learned counsel further submitted that though the petitioner claim that the first respondent was un-authorisedly absent from duty for nearly 170 days during the period from 11.12.2004 to 30.05.2006, the termination order was passed for his un-authorized absence for eight days consecutively from 11.12.2004. Hence, the Labour Court rightly passed the impugned award which warrants no interference.

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



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6.The facts in the present case is not in dispute. Admittedly, the first respondent entered the service of the petitioner Corporation as Driver during the year 1996. The first respondent was terminated from service on 30.05.2006. Challenging the same, the first respondent raised industrial disputes before the second respondent in I.D.No.100 of 2011. The second respondent after considering the factual aspects passed award dated 22.02.2016 directing the petitioner to notionally reinstate the first respondent and to pay 30% of backwages and all other attendant benefits to the first respondent from the date of dismissal till the date of superannuation and further directed that the petitioner shall also pay terminal benefits to the first respondent.

7.However, 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 second respondent is not entitled for any backwages.

8.In view of the above, this Court modifies the Award of the second respondent dated 22.02.2016 passed in I.D.No.100 of 2011



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as follows:

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(i)The petitioner is directed to notionally reinstate the first respondent with continuity of service.

(ii)The first respondent is entitled to all other attendant benefits from the date of dismissal till the date of superannuation, except backwages.

(iii)The petitioner is directed to settle all the terminal benefits and other benefits due to the first respondent within a period of six weeks from the date of receipt of a copy of this order, if not already settled.

9.The writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

M.DHANDAPANI,J.
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To

1.The Presiding Officer,
I Additional Labour Court,

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