



W.A. No.1272 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.1272 of 2023

B. Balachandar

Appellant

v

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

2 The Special Deputy Commissioner of Labour
D.M.S. Complex
Teynampet
Chennai 600 006

3 The Principal Secretary to Government
Transport Department
Fort St. George
Chennai 600 009

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging
the order dated 12.09.2022 passed in W.P. No.27395 of 2016.

For appellant
For RR 1 & 3
For R2

Mr. S.T. Varadarajalu
Mr. C. Gauthamaraj
Mrs.C. Sangamithirai
Special Government Pleader



JUDGMENT

For the sake of clarity and to avoid prolixity, the parties will be adverted to as per their rank in this writ appeal.

2 The brief facts leading to the filing of this writ appeal are as under:

2.1 The appellant, who joined as Conductor in the first respondent Transport Corporation on 18.08.2007, was discharged from service *vide* order dated 21.06.2012, for a misconduct *qua* issuance of tickets, following which, the first respondent filed an approval petition before the second respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947, which was dismissed *vide* order dated 26.05.2014 on the following grounds:

- i. it cannot be held that the domestic enquiry was conducted in the manner it is required to be conducted;
- ii. it cannot be held that *prima facie* case was made out for discharge based on acceptable evidence in the domestic enquiry;
- iii. the punishment of discharge was owing to vindictive attitude of the first respondent;
- iv. full wages for one month was not paid to the appellant.



2.2 Thereagainst, the first respondent filed a writ petition being W.P.No.27395 of 2016, in which, the first respondent took a stand that disciplinary proceedings was initiated and domestic enquiry was conducted before discharging the appellant from service. Whereas, according to the appellant, he was discharged from service without conducting domestic enquiry.

2.3 A Single Bench of this Court, *vide* order dated 12.09.2022, holding that such rival claims, on facts, cannot be adjudicated in a writ petition, quashed the order passed in the approval petition and allowed the writ petition by remanding the matter to the second respondent for fresh consideration.

2.4 Challenging the allowing of the writ petition filed by the first respondent, this writ appeal is filed by the workman.

3 The main contention of the appellant is that though the order of the second respondent, on the whole, is in his favour, the second respondent has not rendered a finding *qua* the delay of 8 days on the part of the first respondent in sending the discharge order.



4 When the matter came up on 22.06.2023 for hearing, we directed the parties to produce Ex.M.8 marked before the second respondent to ascertain the last drawn pay and it was accordingly produced today. A perusal of the same reveals that the appellant was paid only Rs.6,625/- as monthly wages which is for 25 days @ Rs.265/- per day on the ground that he was a daily wage employee.

5 At this juncture, it is apropos to advert to Section 33(2)(b) of the Industrial Disputes Act, 1947, which is extracted below:

“33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.-

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3[or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman-

(b) for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

6 From a reading of the proviso extracted above, it is as clear as

the sky that the employee should be paid wages for one month, which could



be either 28 days or 29 days or 30 days or 31 days, depending upon the number of days the month has, in which, the employee is dismissed. In the instant case, the appellant was discharged on 21.06.2012. Accordingly, the monthly wages for the entire month of June, *i.e.*, for 30 days, will have to be paid and not 25 days, as has been paid to the appellant, albeit the fact that he is a daily wager, since the proviso to Section 33(2)(b), *ibid.*, nowhere states that the employee shall be paid for the actual number of days he had worked. In our considered view, the expression “wages for one month” employed in the proviso is inclusive of paid holidays which the employee would be entitled to otherwise as per law.

7 It was brought to the notice of this Court by the first respondent that on 07.10.2022, the difference in wages has been paid which would relate back to the date of discharge order and that the order of discharge is correct. This argument does not cut ice with us. Concededly, the discharge order is dated 21.06.2012 and it was despatched on 28.06.2012 at 14.26 hrs. and thus, there is a delay of 8 days and it was not sent simultaneously as held by a Coordinate Bench of this Court, in which, one of us (SVNJ) was a member, in **V. Palani v TNSTC Ltd. and another¹**.

Mr. Varadarajalu, learned counsel for the appellant, submitted before this Court the appellant's affidavit dated 26.06.2023 giving up the entire backwages from the date of discharge till today.

9 Taking note of the above, in order to shorten the life of the litigation, by interfering with the order passed by the Single Bench and restoring the order of the second respondent, we direct the first respondent to reinstate the appellant into service as a permanent employee with continuity of service and other attendant benefits within a period of one month from today and he shall be paid on par with his counterparts on and from the date of reinstatement. However, it is made clear that:

- i. the appellant would not be entitled to any backwages from the date of dismissal till today;
- ii. the wages paid to the appellant during the pendency of the writ petition by means of an interim order shall not be recovered from him;
- iii. neither the appellant's share nor the first respondent's share of Provident Fund need be paid for the period from the date of dismissal till today; and
- iv. the appellant's entire service shall have to be taken into account for the purpose of Gratuity and pension, if any.



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This writ appeal stands disposed of in the above terms. Costs made
easy.

(S.V.N., J.) (K.R.S., J.)
26.06.2023

cad

To

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