



WP.No.33248 of 2016

In the High Court of Judicature at Madras

Dated : 02.8.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.33248 of 2016

and

WMP.No.28731 of 2016

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

...Petitioner

Vs

1.R.Manimaran

2.The Presiding Officer,
First Additional Labour
Court, City Civil Court
Main Building, High Court
Compound, Chennai-104.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the order passed in I.D.No.15 of 2014 dated 05.4.2016 on the file of the second respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondent-1 : Mr.R.Perumal Raj



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ORDER

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This is a petition filed by the petitioner seeking to quash the order dated 05.4.2016 made in I.D.No.15 of 2014 on the file of the second respondent.

2. The facts leading to filing of this case are as follows :

(i) The first respondent was appointed as a driver in the petitioner management during the year 1997. He was unauthorizedly absent very many times. Though he was advised not to do so, he had been repeatedly doing the same thing. Therefore, a charge memo dated 13.3.2007 was issued, to which, he did not submit any explanation. Therefore, a domestic enquiry was conducted and ultimately, the charges framed against the first respondent were held to be proved. Pursuant to the enquiry report, the second show cause notice was sent to him, for which also, there was no response. Hence, it was affixed in the notice board of the depot. On 25.8.2009, the first respondent was terminated from service.

(ii) Aggrieved by the termination, the first respondent raised an industrial dispute before the second respondent with a direction to reinstate



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him with all attendant benefits, back wages and continuity of service.

Further, by the impugned award, the second respondent set aside the order of termination and directed the petitioner to reinstate the first respondent with continuity of service and 25% of the back wages from the date of dismissal till the date of reinstatement. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner submits that since the first respondent never turned up to duty for a period of 1529 days, the petitioner management terminated the first respondent on 25.08.2009, after conducting appropriate enquiry. He further submits that though the first respondent was terminated from service in the year 2009, he raised an Industrial Dispute only in the year 2014, which is after a lapse of five (5) years and is barred u/s.2A(3) of the Industrial Disputes Act, 1947 (in short 'the Act'). However, without considering the above said facts, the Labour Court ordered for reinstatement along with 25% backwages, which is *per se* unsustainable. Hence, he prayed to allow the present writ petition.



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4. The learned counsel for the first respondent submits that though the first respondent submitted request for medical leave on 17.7.2005, the charge memo was issued only on 13.03.2007 and the order of dismissal was passed on 25.08.2009 which is after a lapse of two years from the date of issuance of the charge memo. Hence, the award passed by the Labour Court with regard to stoppage of three increments with cumulative effect needs interference of this Court and the same is liable to be modified.

5. Heard the learned counsel appearing on either side and perused the materials placed on record.

6. Admittedly the first respondent joined in the services of the petitioner management as a Driver during the year 1997 and subsequently he was regularised. It is pointed out by the learned counsel for the petitioner management that though the first respondent submitted his leave letter explaining his ill health to the petitioner management on 17.07.2005, the first respondent has not turned up to duty from the year 2005 till 2009, which led to passing of the termination order in the year 2009 and thereafter



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raised a dispute in the year 2014.

7. As per Section 2A of the Act, prior to 15.09.2010, any individual can raise a dispute challenging his discharge, dismissal, retrenchment or termination. However, with effect from 15.09.2010, sub-sections (2) & (3) were inserted under Section 2-A by way of Amending Act 24 of 2010. In view of the said amendment, the workmen should raise a dispute within a period of 3 years from the date of dismissal or termination. In the present case, the workman was terminated from service in the year 2009, however, he has raised a dispute only in the year 2014, which is beyond the period of limitation of three years prescribed under the Act. The Labour Court, without ascertaining the maintainability of the application made by the workmen, has mechanically passed the impugned award directing reinstatement of the workman with backwages which cannot be sustained and the same deserves to be set-aside. Accordingly, the impugned award passed by the Labour Court is set aside.

8. In the result, the present writ petition is allowed. The petitioner



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management is directed to settle the permissible terminal benefits in favour of the workman, if any, entitled within a period of four (4) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

02.8.2023

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

The Presiding Officer,
First Additional Labour
Court, City Civil Court
Main Building, High Court
Compound, Chennai-104.



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