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W.P.Nos.27625 and 28902 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17/11/2023
Delivered on	11/12/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition Nos.27625 and 28902 of 2014

The Management

Rep. By its Senior Deputy Manager (HRD)

Metropolitan Transport Corporation

Pallavan Salai

Chennai 600 002.

...

Petitioner

Vs

1. P.Krishnan

2. The Presiding Officer

II Additional Labour Court

City Civil Court Annexure Buildings

High Court Compound

Chennai 600 104

...

Respondents

Prayer in W.P.No.27625 of 2014: Petition filed under Article 226 of the

Constitution of India praying for the issuance of a writ of certiorari to call



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for the records pertaining to the order dated 5/4/2014 made in C.P.No.24 of 2011 on the file of the second respondent and quash the same.

W.P.No.28902 of 2014:

P. Krishnan

...

Petitioner

Vs

1. The Managing Director
Metropolitan Transport Corporation
Anna Salai, Pallavan Illam
Chennai 600 002.

2. The Administrator
Tamil Nadu State Transport Corporation
Employees Pension Fund
Pallavan Salai
Chennai 600 002.

...

Respondents

Prayer in W.P.No.28902 of 2014: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to pay backwages to the petitioner from January 2011 to April 2013 and pension and other terminal benefits from the date of retirement.

For petitioner

...

Mr.M.Chidambaram



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In W.P.No.27625 of 2014

In W.P.No.28902 of 2014

...

Mr.S.T.Varadarajulu

For respondents

...

Mr.S.T.Varadarajulu

In W.P.No.27625 of 2014

for R.1

Labour Court – for R.2

In W.P.No.28902 of 2014 ...

Mr.M.Chidambaram

for R.R.1 and 2

COMMON ORDER

Writ Petition No.27625 of 2014 has been filed to quash the order dated 5/4/2014 made in C.P.No.24 of 2011 on the file of the second respondent.

2. Writ Petition No.28902 of 2014 has been filed to direct the respondents to pay backwages to the petitioner from January 2011 to April 2013, consequently to pay pension and other terminal benefits from the date of retirement, etc.

3. The facts in W.P.No.28902 of 2014 as per the affidavit enclosed to



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this writ petition are that the petitioner joined the services of the Tamil Nadu State Transport Corporation/respondents as a Conductor at Poonamallee Depot, alleging ticket irregularity, the respondent Corporation has issued charge memo and on conclusion of enquiry, the petitioner was dismissed from service on 16/7/2007.

4. The State Transport Employees Union issued notice of strike to the second respondent on 7/7/2007 demanding certain concessions for the employees of the respondent Corporation. Since the second respondent is a public utility service, conciliation proceedings were initiated on 7/7/2007 before the Joint Commissioner of Labour, Teynampet, Chennai. As the dispute is pending before the Commissioner of Labour, since the petitioner is a workman, as per Section 33 (2) (b) of the Industrial Disputes Act, 1947, the respondents should have sought for approval of the Conciliation Officer, where the dispute is pending on dismissing the petitioner from service.

5. The petitioner has filed a Computation Petition No.24/11 for the period September 2007 to December 2010, claiming backwages before the Second Additional Labour Court. On 5/4/2014,



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the Second Additional Labour Court, allowed the Computation Petition partly and directed the first respondent to pay backwages to the tune of Rs.5,19,164/-. The petitioner has attained the age of superannuation on 30/4/2013. The petitioner was out of service for the past seven years and he has no other job, thereby, the petitioner is entitled for backwages and pension.

6. The facts in W.P.No.27625 of 2015 are that the first respondent was appointed as a Conductor in the Metropolitan Transport Corporation, on 26/1/1983. He was on duty at Route No.54P/A on 25/8/2005. Since the first respondent was irregular in issuing the tickets, the petitioner was issued with the following charges:-

(i). That the first respondent Thiru.P.Krishnan, Ex-Conductor, Staff No.12503 had kept resold ticket for a value of Rs.2 x 3 with an intention to re-sale the same which is misconduct under Sec.25 (XL iii) of the Certified Standing Order.

(ii). That the first respondent had suo motto mentioned Rs.115.50 in the TR as his own cash after having signed it by the Controller which is a misconduct under Section 25 (XXIX) (C) of the Certified Standing Order.



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(iii). That the petitioner had kept shortage of Rs.121/- in his cash bag which is misconduct under Section 25 (XLI) (f) of the Certified Standing Order.

7. The first respondent/conductor has submitted an explanation on 23/9/2005 denying all the charges, which was not satisfactory to the Management. However, without prejudice to the disciplinary action initiated against the first respondent, suspension orders were issued against the first respondent and the same was later revoked and he was permitted to join duty. Enquiry was conducted by giving opportunity to the first respondent. Enquiry Officer filed a report holding that all the charges are proved against the first respondent. The petitioner has issued show cause notice to the first respondent. The first respondent has submitted his explanation without valid ground and he was terminated from service with effect from 16/7/2007.

8. The respondent Corporation has neither filed appeal nor raised any Industrial Dispute before the labour Court. But without exhausting such remedy, the first respondent has filed a Claim Petition No.24 of 2011 on the file of the Second Additional Labour



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Court, Chennai, claiming a sum of Rs.6,29,379.70 towards backwages, bonus, exgratia, batta and earned leave etc., on the ground of non-employment from September 2007 to December 2010. Metropolitan Transport Corporation has filed a detailed counter, opposing the claim of the first respondent in W.P.No.29625 of 2014.

9. It is submitted in the counter of the Corporation that subsequent to the termination of the first respondent from the services, there was a settlement between the petitioner Corporation and workman on 6/2/2008. The Metropolitan Corporation has agreed to deposit Rs.3,81,771/- after deduction of Rs.47,245/- being backwages to the workman. The labour Court has computed the money to be paid by the Metropolitan Transport Corporation to the first respondent as Rs.5,66,409/- basing on 12 (3) settlement. Aggrieved by the same, Metropolitan Transport Corporation has filed W.P.No.27625 of 2014.

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

11. There is no dispute that when the workman is working as a Conductor in the Corporation, alleging certain irregularities, domestic



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enquiry has been launched by giving opportunity to the workman and

Enquiry Officer has found all the charges proved. After issuing show

cause notice, the workman was ultimately terminated from service.

In the meanwhile, the employees of the Corporation have initiated conciliation proceedings before the Commissioner of Labour, Teynampet, Chennai and 12 (3) Settlement was arrived at between the employees of the Corporation.

12. The workman has not challenged the findings of the Enquiry Officer and the proceeding of the management/disciplinary authority on merits. The only ground the workman has taken is that once the workman was terminated from service, the Corporation should have taken the approval of the Government under Section 33 (2) (b) of the Industrial Disputes Act. Admittedly, after the termination of the petitioner from service, the Transport Corporation has not taken any approval of the Government under Section 33 (2) (b) of the Industrial Disputes Act. No explanation was offered from the Corporation as to why such a step was not taken.

13. Now, considering the fact that the proceedings of termination



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have not been approved by the Government, it has to be decided whether the termination will have any effect or not.

14. Learned counsel for workman has submitted the judgment of a larger Bench of the Hon'ble Supreme Court of India in ***JAIPUR ZILA SAHAKARI BHOOMI VIKAS BANK LTD Vs. RAM GOPAL SHARMA AND ORS {Review Petition (Civil) Nos.1122-1123 of 2002}***, decided on ***17/1/2002***, has held as follows:-

“18. In view of what is stated above, we respectfully agree with and endorse the view taken in the case of Strawboard and Tata Iron & Steel Co. And further state that the view expressed in Punjab Beverages on the question is not the correct view. The question raised in the beginning of this judgment is answered accordingly.

19. In these appeals, respondent No.1 was employed as Clerk-cum-Cashier with the



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appellant. He was dismissed from service. As certain proceedings were pending before the Industrial Tribunal, Jaipur, an application seeking approval of the Tribunal for the said dismissal was submitted by the appellant before the Tribunal under Section 33 (2) (b). The said application was contested on various grounds by the respondent including that the appellant Bank had failed to comply with the provisions of Section 33 (2) (b) as salary for one month was not paid. The Tribunal, on facts, found that the appellant failed to comply with the provisions of Section 33 (2) (b) and in that view dismissed the application. The appellant challenged the order of the Tribunal before the High Court in writ petition No.666 of 1980. The same was dismissed concurring with the order passed by the Tribunal.

20. In the view we have taken, the contentions raised in these appeals do not help



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the appellant. We find no merit in these appeals.

Consequently, these are dismissed.”

15. In the case on hand, the workman though terminated from service, respondent Corporation has not taken the approval as required under Section 33 (2) (b) of the Industrial Disputes Act, thereby the entire proceedings of termination will become nonest and thereby, the workman is entitled for backwages. In view of the above, the workman/petitioner in W.P.No.28902 of 2014 is entitled for the relief as sought for in the writ petition.

16. However, the workman has filed Computation Petition No.24 of 2011 seeking for recovery of Rs.5,19,164/- on the ground that the termination of petitioner was not approved as required under Section 33 (2) (b) of the Industrial Disputes Act. The said Computation Petition was decided before the II Additional Labour Court and passed the orders in C.P.No.24 of 2011, directing the Corporation to pay an amount of Rs.5,19,164/-. Aggrieved by the same, W.P.No.28902 of 2014 is filed.

17. It is submitted by the learned counsel appearing for the Transport



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Corporation that since termination proceeding has not been approved, as required under Section 33 (2) (b) of the Industrial Disputes Act, the workman is entitled for backwages. On the other hand, it is submitted by the learned counsel for the Corporation that instead of raising either Industrial Dispute or filing an appeal, the workman has directly filed Computation Petition.

18. On considering the submissions of both sides and on perusal of the record including the judgment of the Apex Court, it is clear that even though the workman was terminated, proving the charges, the approval as required under Section 33 (2) (b) of the Industrial Disputes Act, has not been obtained, thereby all the proceedings of the termination becomes nonest. Consequently as directed by the Hon'ble Apex Court, the petitioner/workman is entitled for backwages. The petitioner considering that termination is nonest has filed C.P seeking backwages. Since the termination found to be nonest, certainly, the petitioner is entitled for backwages, thereby, the order of the labour Court in C.P., cannot be found fault with. It is a matter of record that after the said amount is ordered in C.P by the labour Court, the Transport Corporation has deposited an amount of



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Rs.3,81,771/-, as per the interim order of this Court and the said amount was withdrawn, thereby, the petitioner is entitled for the balance of amount of Rs.1,37,393/- (Rs.5,19,164 – 3,81,771/-).

19. In view of the above, writ petition No.28902 of 2014 filed by the workman is allowed and Writ Petition No.27625 of 2014 filed by the Transport Corporation is dismissed. No costs.

11/12/2023

mvs.

Index: Yes/No

Neutral citation: Yes/No

To

1. The Presiding Officer
II Additional Labour Court
City Civil Court Annexure Buildings
High Court Compound
Chennai 600 104

Dr.D.NAGARJUN,J



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mvs.

Pre-delivery common order in
W.P.Nos.27625 and 28902 of 2014

11/12/2023