



W.P.No.19875 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.9.2023

CORAM :

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

W.P.No.19875 of 2018

and

WMP.No.23324 of 2018

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

...Petitioner

Vs

D.Gurusamy,
Secretary, Representative of
Arasanka Pokkuvarathu Uzhiyar Sangam,
No.7, Pallavan Salai, Kalaiyarangam Valakam,
Chennai – 600 002.

...Respondent

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.118 of 2012 dated 28.04.2018 on the file of III Additional Labour Court, Chennai.

For Petitioner : Mr.M.Chidambaram

For Respondent : Mr.S.T.Varadarajulu



W.P.No.19875 of 2018

ORDER

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This Writ petition has been filed seeking to quash the order dated 28.04.2018 passed by the III Additional Labour Court, Chennai in I.D.No.118 of 2012 .

2. The case of the petitioner is that the respondent was appointed as driver in the petitioner corporation in the year 2001. While so, as there was a dispute regarding fixation of bonus and a general strike was conducted from 09.11.2001 and 25.11.2001, during which period, the respondent assaulted co-employees and prevented them from doing their job and also violated the provisions of the Certified Standing Orders. Therefore, the respondent was suspended from services on 19.11.2001 and subsequently, the suspension order was recalled and the petitioner was reinstated into service on 30.07.2002. Further, pursuant to a circular dated 21.05.2007 issued by the Government, the petitioner passed an order dated 21.5.2007 treating the period from 09.11.2001 to 25.11.2001 as duty period and the period from 26.11.2001 to 20.5.2002 as leave period. Aggrieved by the same, the respondent raised an industrial dispute in I.D.No.118 of 2012,



W.P.No.19875 of 2018

before the III Additional Labour Court, Chennai, which ultimately passed the impugned award dated 28.04.2018, holding that the entire period from 28.11.2001 to 30.07.2002 to be treated as duty period and directed the petitioner management to pay the monetary benefits to the respondent. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that, admittedly, for certain misconducts committed by the respondent, he was placed under suspension on 19.11.2001 and subsequently the said suspension order was also revoked with effect from 30.07.2007 and no punishment was imposed on the respondent for the misconducts committed by him. Further, pursuant to the Government circular dated 21.05.2007, bearing No.3484/SPON14/MTC/01, the petitioner passed the order on the very same day, treating the period from 09.11.2001 to 25.11.2001 as duty period and the period from 26.11.2001 to 20.5.2002 as leave period and all those members involved in the strike were leniently considered based on the policy decision taken by the Government. Therefore, the suspension period of the respondent cannot be treated as duty period, as no work was extracted from the respondent



W.P.No.19875 of 2018

during the said period and thereby, the petitioner management passed the order dated 21.05.2007 treating the said period as leave on loss of pay, however, the Labour Court, had mechanically negated the said order of the petitioner management, which is not sustainable. Hence, he prayed for appropriate orders.

4. Heard learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the material documents placed on record.

5. The whole case lingers on the certified standing order of the petitioner management and for better appreciation, the relevant portion is extracted hereunder:-

“26. PUNISHMENTS FOR MISCONDUCT:

1. The following shall be prescribed as punishment that may be awarded to workmen.

(i) Censure (minor)

(ii) Fine Subject to provision of Payment ages Act (minor)

(iii) Stoppage of increment: Stoppage of increment with or without cumulative effect



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2. SUSPENSION PRINDING ENQUIRY:

.....

(c) If one the conclusion of the enquiry, or as the case may be of the criminal proceedings, the workman has been found guilty of the charges framed against his and it is considered after giving the workmen concerned a reasonable opportunity of making representation on the penalty proposed that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer a hall pass an order accordingly.

1. Provided that when an order of dismissal is passed under this clause, the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period and the subsistence allowance already paid to him shall not be recovered.

2. Provided also that when an order imposing fine or stoppage of annual increment of reduction in rank is passed under this clause, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period.

3. Provided further that when an order of suspension is passed under this clause, and the period between the date on which the workman was suspended from duty pending enquiry or investigation or trial and the date on which the final orders or suspension was passed exceeds 30 days the workman shall be deemed to have been suspended only for 30 days for such short period as is specified in the said final orders of



W.P.No.19875 of 2018

suspension and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period.

(d) If on the conclusion of the enquiry, or as the case may be, of the criminal proceedings, the workman has been found to be not guilty of any of the charges framed against him, he shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension after deducting the subsistence allowance paid to him for such period.

(e) The Payment of subsistence allowance under this Standing Order shall be subject to the workman concerned not taking up any employment during the period of suspension.”

6. Though very many grounds have been raised, the major contention of the learned counsel appearing for the respondent is that, the present award under challenge was passed the Labour Court only based on the Certified Standing Orders of the petitioner management, wherein it is clearly stated that when an order of suspension is passed under this clause, and the period between the date on which the workman was suspended from duty pending enquiry or investigation or trial and the date on which the final orders or suspension was passed exceeds 30 days the workman shall be deemed to have been suspended only for 30 days for such short period as is



W.P.No.19875 of 2018

specified in the said final orders of suspension and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period. From the above, if at all the petitioner could forfeit any pay, it could be only for 30 days. However, in the case on hand, Government Order had come to be passed dropping all action against the employees, who had gone on strike.

7. That being the case, the entire period during which the workman were under strike should be reckoned as duty period for the purpose of salary and wages and it would not be open to the petitioner to consider a portion of the period as duty period and the other period as loss of pay. In the above scenario, the Labour Court had considered the standing orders in proper perspective and had passed the impugned award, which is sustainable.

8. In view of the above standing order of the petitioner corporation, this Court is of the view that, the impugned award is not perverse and the



W.P.No.19875 of 2018

same was passed wholly based on the certified standing orders and this

Court is not inclined to interfere with the same.

9. For the reasons aforesaid, this Writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

14.09.2023

skt

Index : Yes/No

Neutral Citation : Yes/No

Speaking Order : Yes/No

To

The III Additional Labour Court,
Chennai.



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W.P.No.19875 of 2018

M.DHANDAPANI., J.

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