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W.A.No.1226

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.1226 of 2023 and C.M.P.No.12400 of 2023

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

Appellant

v

1 M. Patrick
2 The Presiding Officer
II Additional Labour Court
High Court Compound
Chennai 600 104

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent to set aside the
order dated 12.04.2022 made in W.P.No.29189 of 2013.

For appellant

Mr. M. Chidambaram

For R1

Mr. S. Ravi

R2

Labour Court



JUDGMENT

To avoid verbosity and for the sake of clarity, the appellant, the first respondent and the second respondent will be referred to as the Transport Corporation, workman and Labour Court, respectively.

2 The succinct facts leading to the institution of this writ appeal are as under:

2.1 While the workman was employed as Assistant Tradesman in the Transport Corporation, he was issued with a charge memo dated 05.04.1997 alleging that he remained unauthorisedly absent for a period of 520 days from 13.03.1997 to 14.08.1998. Not convinced with his reply thereto, after conducting domestic enquiry followed by second show cause notice and not satisfied with his explanation, he was terminated from service *vide* order dated 19.01.1999.

2.2 Thereagainst, he raised an industrial dispute in I.D. No.815 of 2001, in which, the Labour Court, *vide* award dated 28.09.2012, set aside the termination order and directed the Transport Corporation to pay a compensation of Rs.3 lakhs to the workman, in lieu of reinstatement in service.



2.3 Challenging the said award, the workman filed a writ petition being W.P. No.29189 of 2013, in which, a Single Bench of this Court, *vide* order dated 12.04.2022, quashed the award of the Labour Court and allowed the writ petition by directing the Transport Corporation to reinstate the workman into service together with continuity of service, full backwages and other attendant benefits. Further, noting that the workman had already got superannuated, the Single Bench directed the Transport Corporation to disburse all the retirement benefits till the date of his superannuation and also to pay the other pensionary benefits which the workman is entitled to.

2.4 Calling into question the aforesaid order passed by the Single Bench, the Transport Corporation is before us in this writ appeal.

3 The learned counsel for the Transport Corporation contended that when the workman himself has accepted his guilt in the domestic enquiry and he also raised the industrial dispute after a lapse of 2 years and 4 months, the Single Bench ought not to have allowed the writ petition filed by him.



4

Per contra, learned counsel for the workman contended vehemently that the award of the Labour Court is perverse and the order passed by the Single Bench in granting the entire relief is perfectly in order.

5 We gave our anxious consideration to the rival submissions.

6 According to the workman, he was suffering from mental disorder, to substantiate which, he had produced medical certificate. From a perusal of the exhibits, it is limpid that there were two letters *viz.*, Exs.W.1 and W.2, addressed to the Transport Corporation with regard to the workman's leave. When a workman is continuously indisposed, the employer is empowered to retrench him which may not be termed as punishment. However, the workman would be entitled to retrenchment compensation and other benefits. At this juncture, it would be apropos to advert to Section 2(oo) of the I.D. Act. For the sake of ready reference, the said provision is extracted below:

*[(oo) "retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include--

(a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or



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(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;”

However, the Transport Corporation has categorically denied the receipt of the letters which were sent by Certificate of Posting. According to the Transport Corporation, they have not received the medical certificate at all. Albeit the Labour Court has disbelieved the version of the Transport Corporation and accepted the contention of the workman that the latter had submitted medical certificate in proof of his illness, this Court cannot interfere with the said finding of the Labour Court, as it is a finding of fact.

7 It is also to be pointed out that merely because there was a proved misconduct, that, by itself, will not preclude the Labour Court from exercising its powers under Section 11-A of the Industrial Disputes Act, 1947, in moulding the relief. In the instant case, the Labour Court has moulded the relief by granting compensation in lieu of reinstatement sought by the workman. However, given the fact that the workman had served for 17 long years, the amount of compensation awarded by the Labour Court is a pittance. Though the Labour



Court, as stated *supra*, is empowered to impose a lesser punishment, this Court is of the view that the Labour Court should have converted the punishment of dismissal from service into one of compulsory retirement and granted pensionary and other terminal benefits as the workman is governed by the old pension scheme.

8 According to the workman, the domestic enquiry conducted was not fair and proper. The Labour Court has accepted this plea of the workman. But, be it noted, in the light of the judgment of the Supreme Court in **Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v Educational Appellate Tribunal and another**¹, admission of guilt alone is sufficient for imposition of punishment and a detailed enquiry is not required. However, in the instant case, though it is the stand of the Transport Corporation that the workman has admitted his guilt, there is no evidence to that effect.

9 As far as the delay of nearly 2 years and 4 months in raising the industrial dispute is concerned, in the opinion of this Court, the same is not fatal, taking into account the mental status of the workman.

¹ (1999) 7 SCC 332



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10 Be that as it may, the factum of the workman suffering from mental disorder is an admission of fact by himself. Thus, given his mental condition, he could definitely not have been put back in service. At the same time, the actual service put in by him also cannot be brushed aside. In such perspective of the matter, as observed in paragraph 7, *supra*, the punishment of termination from service is modified to one of compulsory retirement and as a sequitur, he is entitled to get terminal benefits alone from the date of his entry into service till the date of termination, *i.e.*, 19.01.1999. Further, in our view, this is a case of cessation of employer-employee relationship and accordingly, the workman would be entitled to full pension and so also arrears of pension, for the actual service put in by him. The arrears of pension for the actual services rendered shall be paid within two months. The Transport Corporation is expected to settle the actual Provident Fund dues, if any, and Gratuity, within a period of one month from the date of receipt of a copy of this judgment and the pensionary benefits shall commence on or before 01.08.2023.



W.A.No.1226

S. VAIDYANATHAN,J.

and

K.RAJASEKAR, J.

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This writ appeal stands disposed of in the above terms, sans costs.

Connected C.M.P. stands closed.

[S.V.N., J.] [K.R.S., J]
20.06.2023

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Note to Office:

Issue order copy by 20.07.2023

To

The Presiding Officer
II Additional Labour Court
High Court Compound
Chennai 600 104

W.A. No.1226 of 2023