



WEB COPY



W.P.No.612 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM :

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

W.P.No.612 of 2017

and

WMP.Nos.658 of 2017 & 40097 of 2018

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

...Petitioner

Vs.

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

2. R.Arumugam

...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.435 of 2013 dated 10.05.2016 on the file of the 1st respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents : Mr.V.Balamurugan, for R2



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ORDER

WEB COPY This Writ petition has been filed seeking to quash the order dated 10.05.2016 made in I.D.No.435 of 2013 on the file of the 1st respondent.

2. The case of the petitioner is that, the 2nd respondent/workmen was appointed as a conductor in the petitioner corporation in the year 1989 and he was always irregular in duty, for which, so many punishments and warnings were imposed on him. While so, on 12.08.2007 at 23.20 hours, when the 2nd respondent was on duty, only three passengers were there in the bus, among whom, one person was not having ticket and when the same was questioned by the Checking Inspector, it was found that the said passenger had given Rs.10/- to the 2nd respondent for issuing ticket, however, the 2nd respondent neglected to issue the ticket, despite collecting the ticket fare and further, the stage of the route was not properly filled by the 2nd respondent. Therefore, the 2nd respondent was suspended from service, pursuant to the checking inspector's report and was subsequently terminated from service on 26.7.2008 after conduct of enquiry. As against the said termination, the 2nd respondent raised a dispute in I.D.No.435 of



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2013, after a lapse of 5 years and the 1st respondent, without considering any of the above said facts, passed the present impugned award dated 10.05.2016, directing the petitioner to reinstate the 2nd respondent with continuity of service and other attendant benefits. Challenging the same, the petitioner has come up this Writ petition.

3. Learned counsel for the petitioner corporation submitted that, the 2nd respondent had even prior to this misconduct, committed more that 32 misconducts and taking into consideration all the said misconducts, the petitioner management terminated the 2nd respondent from service in the year 2008, after conducting proper domestic enquiry by issuing charge memo and after affording opportunity to the workmen. Though the 2nd respondent was permanently terminated from service on 26.07.2008, as against the said termination order, without approaching the proper forum, the 2nd respondent filed writ petitions, which ultimately ended in filing of the industrial dispute before the 1st respondent only in the year 2013, after a lapse of five years, which is barred by limitation as per amended Section 2A(3) of the Industrial Disputes Act, 1947. Though it is the duty of the 2nd



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respondent to establish the case before the Labour Court, the workmen did not take any earnest efforts to mark any documents, not even the termination order before the Labour Court and no witnesses were examined on behalf of the workmen, to prove his innocence. While so, the Labour Court, for reasons best known to it, passed the present impugned award, directing the petitioner to reinstate the 2nd respondent, which is not sustainable. Hence, he prayed for appropriate orders.

4. Learned counsel appearing for the 2nd respondent submitted that, the 2nd respondent joined the service of the petitioner corporation in the year 1981 on daily wage basis and his service was subsequently regularised in the year 1982. While so, for certain allegations, departmental proceedings were initiated as against the workmen and the petitioner corporation, subsequently removed the 2nd respondent from service on 26.07.2008, without obtaining necessary approval from the Labour Officer, as mandated under Section 33(2)(b) of the Industrial Disputes Act, 1947, and thereby the order of termination is illegal. Therefore, as against the said dismissal order, the workmen preferred appeal before the appellate authority and the same



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was dismissed, vide order dated 08.12.2008, pursuant to the order of this Court dated 24.03.2010 made in W.P.No.5263 of 2009. Challenging the said rejection order, the 2nd respondent filed another Writ petition before this Court in W.P.No.1500 of 2011 and this Court, vide order dated 06.12.2012 set aside the rejection order passed in appeal and directed the Joint Managing Director, Metropolitan Transport Corporation (Chennai) Limited / the appellate authority to dispose of the appeal on merits by giving proper reasons and specifically directed the appellate authority to consider the workmen's case sympathetically by taking note of the long period of service of about 27 years put in by the 2nd respondent. However, pursuant to the order of this court dated 06.12.2012, nothing further transpired.

5. In such circumstances, the 2nd respondent raised the present dispute after a lapse of five years, as there were legal proceedings pending both before this court as well as before the appellate authority, which is the cause for the delay and the same cannot be put against the 2nd respondent. Further, the Labour Court, after taking into consideration all the above said facts, passed the present award under challenge, which cannot be interfered with.



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It is the further stand of the 2nd respondent in its counter that the past conduct ought not to have been considered without issuing notice before imposing the extreme penalty, which violated the principles of natural justice and that, at the time of removal from service, a common dispute was pending before the Special Deputy Commissioner of Labour, Chennai and that therefore, the petitioner should have obtained approval. Hence, he prayed for dismissal of this Writ petition.

6. Heard learned counsel on either side and perused the material documents placed on record.

7. Admittedly, for various misconducts committed by the 2nd respondent, including the present one, he was terminated from service on 26.07.2008 and the 2nd respondent raised the dispute only in the year 2013, after a lapse of three years and as rightly pointed out by the learned counsel for the petitioner management, it is a clear violation of Section 2A(3) of the Industrial Disputes Act, 1947. For better appreciation, the relevant portion is extracted hereunder:-



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2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.— Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)

8. A careful perusal of the above said amendment makes it clear that, the workmen should raise a dispute before the expiry of three years from the



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date of dismissal. Further, in the case on hand, the amendment having come into force on 15.9.2010 and the dispute has been raised in the year 2013, after a lapse of three years, the dispute is barred by limitation and not maintainable. While so, the Labour Court, without considering the period of limitation, entertained the dispute raised by the workmen and has also subsequently allowed the same, vide present impugned award, which cannot be sustained. Though the 2nd respondent claim that due to pendency of the appeal proceedings, the 2nd respondent approached the Labour Court after a delay of 5 years, however, the workmen has not pursued his remedy even as per the order of this Court dated 06.12.2012 made in W.P.No.1500 of 2011. That being the case, the delay is fatal to the case of the 2nd respondent.

9. In view of the above, this Court is of the view that the impugned award dated 10.5.2016 made in I.D.No.435 of 2013 by the 1st respondent is perverse and accordingly, the impugned award is set aside. However, the 2nd respondent is at liberty to workout his remedy in the manner known to law, in terms of the order of this Court dated 06.12.2012 made in W.P.No.1500 of 2011.



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WEB COPY 10. With the above observations and directions, this Writ petition is allowed. No costs. Consequently, the connected Miscellaneous petitions are closed.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking Order : Yes/No

To

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M.DHANDAPANI., J.

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