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W.P.No.4294 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.4294 of 2017 and
W.M.P.No.4493 of 2017**

The Management,
Metropolitan Transport Corporation
(Chennai) Limited,
Represented by its Senior Deputy Manager,
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. The General Secretary,
Government Transport Employees Union (CITU),
Registration No.7/MTS,
No.2, Pallavan Salai, Chennai - 600 002.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records pertaining to the order passed in I.D.No.274 of 2013 dated 10.05.2016 on the file of the first respondent herein and quash the same.



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For Petitioner : Mr.M.Chidambaram
For Respondents : Mr.S.T.Varadarajulu for R2
R1 - Labour Court

ORDER

The impugned award in I.D.No.274 of 2013 dated 10.05.2016 passed by the first respondent is under challenge in the present Writ Petition.

2. The petitioner is the Management / Transport Corporation. One A.Sampath, driver of Poonamallee Depot is the member of the second respondent Union. Due to his rash and negligent act of driving, a cyclist died, for which, FIR was registered, pursuant to the same, the charge memo was issued on 28.06.1998. A domestic enquiry was conducted and since the delinquent employee was imposed punishments for more than 13 times, for which, he was already punished. Based on the Enquiry Officer's report, the delinquent employee was imposed with a punishment of stoppage of increment for three years with cumulative effect and suspended from service for the period 18.03.1998 to 10.06.1998. Against the punishment order, the



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second respondent Union filed a Industrial Dispute in I.D.No.274 of 2013 before the I Additional Labour, Chennai. 11 documents were marked by the Union on behalf of the employee and 13 documents were marked on behalf of the Management. The Labour Court proceeded on the materials placed before it and came to a conclusion that the witness to the incident was hearsay witness and since there was no eye witness to the incident which had happened. It came to a conclusion that the Enquiry Officer's finding was not based on any evidence at all and it was perverse. The Labour Court also came to a conclusion that since the misconduct was not established in the enquiry anywhere, the punishment of stoppage of increment for three years with cumulative effect cannot be sustained. Accordingly, the Labour Court set aside the punishment of stoppage of increment for three years with cumulative effect and also directed that the suspension period from 18.03.1998 to 10.06.1998 was to be considered as duty period. Aggrieved by the above said award, the Management is before this Court by filing the present Writ Petition with the aforesaid prayer.



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3. The learned counsel appearing for the petitioner assails the impugned award on the ground that once the Union has accepted that the domestic enquiry was held in a fair and proper manner, the Labour Court ought not to question the same. The Labour Court has also failed to take note of the fact that the criminal proceedings against the delinquent employee ended in acquittal only on technical plea and not on merits. The Labour Court also failed to consider that the petitioner Management imposed a lesser punishment instead of termination from service particularly in view of the fact that the delinquent Driver was involved in such delinquent acts for more than 13 times for which documentary evidence was produced before the Labour Court. Citing the aforesaid grounds, the learned counsel for the petitioner seeks indulgence of this Court to set aside the impugned award.

4. The learned counsel for the second respondent contended that the Labour Court had arrived at a conclusion that the punishment imposed on the delinquent Driver was not proportionate but only on that basis, the



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Labour Court had proceeded to set aside the punishment and also directed the suspension period be treated as duty period. Hence, the learned counsel for the second respondent seeks dismissal of the Writ Petition.

5. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

6. It is not in dispute that the delinquent Driver was imposed with a major punishment of stoppage of increments for three years with cumulative effect and the same was set aside by the Labour Court by its award dated 10.05.2016. However, at the time of admission, this Court, by an order dated 21.02.2017 has granted an order of interim stay of the impugned award, as a result of which, the punishment imposed on the delinquent Driver was restored. However, considering the principles of proportionality of punishment, this Court feels that since the stoppage of increment imposed on the delinquent Driver was a period of three years and



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the said punishment was imposed wayback in the year 1998 and that the criminal proceedings against the delinquent Driver had also ended in acquittal. This Court feels that the punishment of stoppage of increments for three years with cumulative effect can be modified as without cumulative effect which would meet the ends of justice.

7. Accordingly, this Writ Petition is disposed of with a modification of the impugned award dated 10.05.2016 to the effect that the punishment imposed on the delinquent Driver is modified as stoppage of increments for three years without cumulative effect. The Management is directed to calculate the increments payable to the delinquent Driver and disburse the same within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

19.07.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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