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W.A. No.1324 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.1324 of 2023 & C.M.P. No.13041 of 2023

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

Appellant

v

1 E. Perumal

2 The Presiding Officer
II Additional Labour Court
City Civil Court (Annexe Building)
High Court Compound
Chennai 600 104

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 31.03.2022 passed in W.P. No. 23174 of 2014.

For appellant Mr. M. Chidambaram

For R1 Mr. V. Ajay Khose

R2 Labour Court

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JUDGMENT

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For the sake of clarity, the appellant and the respondents 1 and 2 will be adverted to as Transport Corporation, workman and Labour Court, respectively.

2 The facts leading to the filing of this writ appeal are succinctly stated as under:

2.1 The workman joined the Transport Corporation as Conductor on 30.10.1986. While so, he was issued with a charge memo dated 13.06.2007 for remaining unauthorisedly absent for more than 8 days from 26.05.2007. Not satisfied with his reply dated 26.06.2007, the Transport Corporation dismissed him from service *vide* order dated 28.02.2008.

2.2 Assailing his dismissal, he raised an industrial dispute in I.D.No.403 of 2009 before the Labour Court, Chennai, in which, an award dated 29.05.2013 was passed ordering reinstatement with continuity of service and 40% backwages.



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2.3 The main reasoning assigned by the Labour Court for granting the aforesaid relief to the workman was that no domestic enquiry was conducted before resorting to capital punishment of dismissal, thereby, depriving him of the opportunity to defend his case.

2.4 Challenging the said award, while the workman filed W.P.No.20009 of 2014, the Transport Corporation filed W.P. No.23174 of 2014.

2.5 A Single Bench of this Court which heard both the writ petitions together, *vide* a common order dated 31.03.2022, dismissed the writ petition filed by the Transport Corporation and allowed the writ petition filed by the workman by directing the Transport Corporation, *inter alia*, to pay full backwages to the workman from the date of his dismissal till the date of his superannuation.

2.6 The aforesaid order passed by the Single Bench is appealed against before us by the Transport Corporation.



3 Heard Mr. M. Chidambaram, learned counsel for the Transport Corporation and Mr. V.Ajay Khose, learned counsel for the workman.

4 Placing reliance upon the judgment of the Supreme Court in **M.C.D. v Praveen Kumar Jain and others**¹, the Single Bench held that inasmuch as the provisions of Section 25-F of the Industrial Disputes Act, 1947, have not been complied with, the punishment of dismissal from service becomes invalid. Further, relying upon the judgment of the Supreme Court in **Raj Kumar Dixit v Vijay Kumar Gauri Shanker**², the Single Bench held that the workman is entitled to all the benefits.

5 We find no error in the judgment under assail granting full backwages as against 40% backwages awarded by the Labour Court. While holding so, we are not oblivious of several judgments of the Supreme Court, as per which, entitlement to full backwages is not automatic when the dismissal is set aside on illegalities. But, in the instant case, the Single Bench, finding that there was no reason for depriving the workman of 60% backwages, has awarded full backwages, which finding is in complete agreement with us.

¹ (1998) 9 SCC 468

² (2015) 9 SCC 345
<https://www.mhc.tn.gov.in/>



6 During the pendency of this appeal, the workman filed an affidavit dated 21.06.2023, the relevant paragraph of which reads thus:

“10. I respectfully submit that from out of the total back wages, I do hereby agree for adjustment of the 17 B wages already paid to me and also for deduction of PF Contributions, from the total back wages payable to me from the date of my dismissal to the date of my superannuation. I agree to receive 50% from out of the balance amount to be paid to me after adjustment of the amounts under the above two heads, if the Appellant Corporation agrees to pay me Gratuity and Pension for my entire service from the date of my joining to the date of my retirement and if they agree to pay me the other service / terminal benefits and if they agree to pay me the above amounts including arrears of pension within a stipulated time.”

7 As per the above affidavit, the workman is agreeable for giving up 50% of the balance amount due to him after adjustment of wages paid under Section 17-B of the I.D. Act and P.F. contribution.

8 Considering the aforesaid circumstances of the case, more so, the fact that the State has suffered starvation of funds due to COVID-19 for two years, the order of the Single Bench and the award of the Labour Court are modified as under:

a The workman is entitled to be reinstated in service as if there is no order of dismissal and shall be deemed to be in service till the date of superannuation;

b Since the workman has attained the age of superannuation, the question of reinstating him into service does not arise;



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c Though the wages paid under Section 17-B of the I.D. Act cannot be adjusted, in the case on hand, the workman has given an undertaking for adjusting the wages paid under Section 17-B, *ibid.*, from the amount payable to him. Hence, the wages paid u/s 17-B can be adjusted.

d As the Transport Corporation has not contributed towards the workman's share of Provident Fund, it is the duty of the Transport Corporation to contribute towards its own share and the workman's share towards Provident Fund from the date of dismissal from service till the date of superannuation;

e After adjustment of the wages payable under Section 17-B, *ibid.* and adjustment of the employer's and workman's contributions towards Provident Fund, 50% of the balance amount of backwages shall be paid to the workman within a period of four months from the date of receipt of a copy of this judgment;

f The Transport Corporation shall pay Gratuity and arrears of Pension within two months from the date of receipt of a copy of this judgment, failing which, interest @ 10% per annum from the date of the award is liable to be paid to the workman and such interest component shall be recovered from the officials concerned who are responsible in regard thereto; and

g The Pension amount commencing from 01.08.2023 shall be paid regularly.

h The amount of backwages shall be spread over from the date of dismissal till the date of superannuation in the light of the judgment of the Supreme Court in **Sundaram Motors Pvt. Ltd. V Ameerjan and another**³.



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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.)

22.06.2023

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S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

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