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W.A.No.1 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.912 of 2023
and
C.M.P.No.9132 of 2023

The Management of
Metropolitan Transport Corporation
Pallavan House,
Chennai-600 002.

..

Appellant

-VS-

1. Mr.U.Jeeva

2. The Presiding Officer,
Ist Additional Labour Court,
IInd Floor, High Court Compound,
Chennai-600 104.

..

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the
order dated 07.03.2022 passed by this Court in W.P.No.10516 of 2011.

For Appellant : Mr.M.Chidambaram

For R1 : Mr.R.Jaikumar
for Mr.K.V.Dhanapalan



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JUDGMENT

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This Writ Appeal has been preferred by the Management challenging the order dated 07.03.2022 made in W.P.No.10516 of 2011, dismissing the Writ Petition, by confirming the Award of the Labour Court dated 18.09.2010 in I.D.No.275 of 2004.

2. The 1st Respondent/Workman was appointed as a Junior Tradesman at Vyasarpadi Depot on 30.05.1990. While he was working at Vyasarpadi Depot, he was unauthorizedly absent from 01.10.1995, for which a Charge Memo dated 26.10.1995 was issued to him. Based on an explanation given by the 1st Respondent/Workman on 25.11.1995, he was permitted to rejoin duty and his services was transferred from Vyasarpadi Depot to Ambattur Depot. Thereafter, an enquiry was conducted, whereby the charges were held to be proved against the 1st Respondent herein and ultimately, on 22.01.1997, the Appellant-Corporation had dismissed the 1st Respondent from service. Challenging the order of dismissal, the 1st Respondent/Workman raised a dispute before the Conciliation Officer, which ended in failure and thereafter, he had raised an Industrial Dispute in I.D.No.275 of 2004 before the I Additional Labour Court, Chennai and the I Additional Labour Court, Chennai passed an Award dated 18.09.2010, setting aside the dismissal order. Being aggrieved, the Appellant/Transport Corporation has preferred a Writ Petition in W.P.No.10516 of 2016. A learned Single Judge, vide order



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dated 07.03.2022, dismissed the Writ Petition by confirming the Award of the Labour Court. Challenging the said order passed in the aforesaid Writ Petition, the present Writ Appeal has been preferred by the Management.

3. The learned counsel appearing for the Appellant/Management submitted that the Workman joined the service on 26.10.1995 and he was unauthorizedly absent from 01.10.1995 and after conducting enquiry, he was dismissed from service on 22.01.1997. Challenging the said dismissal order, an Industrial Dispute was raised after a delay of 7 years, which was taken for adjudication as I.D.No.275 of 2004 and the Labour Court passed an Award on 18.09.2010 and the Writ Petition has been filed immediately in 2011. He further submitted that during the pendency of the Writ Petition, 25% of the Award amount was deposited and the backwages under Section 17B of the Industrial Disputes Act has also been paid. He further submitted that the learned Single Judge, without considering the same, has dismissed the Writ Petition on 07.03.2022. The learned counsel for the Appellant/Management also submitted that though notice has been sent by the Appellant Management, the same has been denied by the Workman and though the Workman has not questioned the Departmental enquiry, the Labour Court held that the enquiry was bad. It is further submitted that in case Departmental enquiry had been challenged by the Workman before the Labour Court, the Appellant would



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have got an opportunity to establish the charges before the Labour Court.

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4. The learned counsel appearing for the 1st Respondent/Workman submitted that as the conciliation proceedings raised by the 1st Respondent/Workman was pending, he could not move the Labour Court in time and therefore, there was no laches as contended by the learned counsel for the Appellant/Management.

5. Heard both sides and perused the records.

6. A perusal of the Award passed by the Labour Court would go to show that the Labour Court has ordered reinstatement of the Workman with continuity of service, backwages and other attendant benefits. The Labour Court has categorically held that even though ex parte enquiry was conducted, the Workman has forwarded the medical certificate from where he took treatment and the same was accepted by the employer and the Workman was allowed to join duty on 25.11.1995 and hence, the punishment of dismissal imposed on the Workman for the unauthorised absence of 25 days is harsh. That apart, the Labour Court, on perusal of records, had rendered a finding that enquiry notice was sent to the 1st Respondent to his old address, that too when he was on leave, which fact was admitted by the Management Witness before the



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Labour Court. Even assuming for the sake of argument that the Workman has not challenged the enquiry before the Labour Court under Section 11A of the Industrial Disputes Act, 1947, the punishment imposed by the Employer is really harsh and disproportionate.

7. It is no doubt true that the Workman raised a dispute after a delay of 7 years. The Apex Court, in the case of ***Prabhakar Vs. Joint Director Sericulture Department and Others*** reported in ***(2015) 15 SCC 1***, has held that if there is delay in raising dispute, no relief could be granted to the Employee. Though the said Judgment is applicable to the facts of the case, as both the parties have contested the case on merits, in the case on hand, there is no evidence to the effect that the Employer has taken a plea that there was a delay in raising the dispute.

8. The Hon'ble Supreme Court, in the case of ***Padmasundara Rao and Ors. Vs. State of Tamil Nadu and Ors.*** reported in ***(2002) 3 SCC 533***, has held as follows:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the



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facts of a particular case, said Lord Morris in utterances are made in the setting of facts of a particular case, said Lord Morris in Herrington V. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

9. The 1st Respondent/Workman filed an affidavit dated 22.04.2023 to the effect that he is willing to give up 75% of the backwages and he may be paid on par with his immediate junior G.Subramanian

10. Though the fact that G.Subramanian is the immediate junior of the Workman is not disputed by the Management, Mr.R.Jaikannan, learned counsel for the 1st Respondent submitted that the said G.Subramanian has a clean past record and that the Workman concerned in this Appeal has not reported for work, apart from the fact that he raised dispute with a delay of 7 years. That apart, the Employer had already paid 25% of the backwages and the wages under Section 17B of the Industrial Disputes Act, 1947 till February 2022 and therefore, the request of the Workman as per the affidavit may not be accepted.

11. Taking note of the totality of circumstances, as the findings of the Labour Court are based on evidence, this Court cannot reappreciate the evidence and come to a conclusion. As there was delay in raising the industrial dispute and the Workman had



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already been paid 25% of the backwages and out of the said amount, the Employer had contributed towards Provident Fund, we are of the view that the Workman will not be entitled to any backwages till the date of the award. However, 25% of the backwages paid and wages under Section 17 B cannot be adjusted or deducted from other benefits payable to the Workman. As the Workman has rendered 25 years of service and has got 2 more years, he shall be reinstated in service based on the Award and shall be paid wages on par with his junior G.Subramanian and the employer has to pay the Employee's and Employer's contribution due to the employee from the date of the Award till the date of reinstatement and thereafter, continue to pay the Employer's contribution on reinstatement of the employee and the employee will have to continue to pay his contribution.

12. The Award of the Labour Court is modified to the extent mentioned supra. We make it very clear that the Workman will not be entitled to any backwages upto the date of the Writ Petition, except the amounts stated supra. The Workman is directed to be reinstated within a period of two weeks from the date of receipt of a copy of this judgment, if he has not attained the age of superannuation as per the date of birth entered in the service records. The Appellant/employer is expected to comply with the award as modified by this Court, within a period of four months from the date of receipt



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of a copy of this judgment. In case the modified award is not implemented, it is open to the employee to file a complaint under Section 29 of the Industrial Disputes Act, 1947.

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It goes without saying that if any complaint is made by the Workman under Section 29 of the Industrial Disputes Act, 1947, the persons who are falling under Section 32 of the Industrial Disputes Act, 1947, need to be prosecuted and the Government shall sanction prosecution taking note of the decision of Apex Court in the case of **Rajkumar Gupta vs. Lt. Governor, Delhi** reported in **1997 (1) LLJ 994**. Once the prosecution is launched, the appropriate criminal court is expected to take up the matter and it shall proceed with the matter on a day-to-day basis without adjourning the matter beyond fifteen working days at any point of time so as to bring the issue to a logical end.

This Writ Appeal is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [R.K.M., J]
24.04.2023

Index: Yes / No
Internet: Yes / No
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To

The Presiding Officer,
Ist Additional Labour Court,
IInd Floor, High Court Compound,
Chennai-600 104.



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S. VAIDYANATHAN,J.,
and
R.KALAIMATHI.,J

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