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W.P.No.12127 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM :

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

W.P.No.12127 of 2017
and
WMP.No.12973 of 2017

The Management,
Metropolitan Transport Corporation,
Anna Salai, Chennai – 600 002.

...Petitioner

Vs.

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

2. S.G.Palanivelu

...Respondents

Petition filed 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.123 of 2014 dated 20.07.2016 on
the file of the first respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents : Ms.M.D.Leelavathi, for R2



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ORDER

This Writ petition has been filed seeking quashment of the award dated 20.7.2016 passed by the 1st respondent in I.D.No.123 of 2014.

2. The case of the petitioner is that, the 2nd respondent was working in the petitioner management as a driver. He was unauthorizedly absent various times and despite several warnings, he was habitually absent. On account of his absence from 01.10.2006, a charge memo came to be issued, for which, he also submitted his explanation on 22.02.2007. After receipt of his explanation, the petitioner management reinstated him on 14.03.2007 without prejudice to the domestic inquiry. Once again, the 2nd respondent was unauthorizedly absent to duty. Hence, the petitioner management issued the second show cause notice, for which also, he submitted his explanation on 25.08.2007. Being not satisfied with the explanation, the 2nd respondent was terminated from service on 01.02.2008, after conducting domestic inquiry and taking into consideration his past conduct. Challenging the said termination order, the 2nd respondent filed an industrial dispute in I.D.No.123 of 2014 before the 1st respondent, who in turn, allowed the

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same, vide present impugned award and directed the petitioner management to reinstate the 2nd respondent with continuity of service and other benefits.

Challenging the same, the petitioner management is before this Court.

3. Learned counsel for the petitioner submitted that, the 2nd respondent is a chronic absentee and he was unauthorisedly absent to duty, which is a clear violation of Certified Standing orders of the petitioner management, as the same affects the smooth functioning of the petitioner corporation and it is pertinent to note that, the 2nd respondent earlier suffered eight punishments during his service. Further, though, the 2nd respondent had a statutory appeal remedy against the termination order, he had not exhausted the said remedy and instead of filing the statutory appeal, the 2nd respondent filed the industrial dispute before the 1st respondent, who in turn, without considering any of the above said facts, allowed the industrial dispute by the impugned award on the ground that the domestic inquiry was not conducted in a manner known to law. However, it is pertinent to note that, already a charge memo came to be issued as against the 2nd respondent for his unauthorised absence, for which, he submitted his explanation and



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after receipt of which, the petitioner management reinstated him, without prejudice to the domestic inquiry. While so, once again, the 2nd respondent was unauthorizedly absent to duty and thereby, the petitioner management issued the second show cause notice, for which also, he submitted his explanation on 25.08.2007 and being not satisfied with the same, the petitioner management ordered for domestic inquiry so as to give an opportunity to the 2nd respondent. Though, initially, he attended the enquiry on certain days, subsequently he absented himself during the domestic inquiry proceedings. Ultimately, considering the past conduct, the 2nd respondent was terminated on 01.02.2008 and the 2nd respondent is the one, who failed to utilise the opportunity given to him to prove his innocence.

4. He further submitted that as there was no pending dispute under conciliation, the petitioner management was not required to obtain any approval under Section 33(2)(b) of the Industrial Disputes Act, 1947, for terminating the 2nd respondent. Further, the 2nd respondent had filed petition under Section 2A(2) of the ID Act, after a lapse of about 6 years, which is barred by limitation, as the 2nd respondent ought to have raised an industrial



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dispute within a period of three years from the dismissal, however, the said facts were not properly adjudicated by the 1st respondent and had mechanically passed the present impugned award, which is wholly unsustainable. He further more submitted that, without any specific averment made by the 2nd respondent with regard to not being gainfully employed during the non-employment period, the 1st respondent awarded 100% back wages, which cannot be acceded to. Hence, he prayed for appropriate orders.

5. Learned counsel appearing for the 2nd respondent submitted that, pursuant to passing of termination order as against the 2nd respondent, the petitioner corporation has not obtained necessary approval as mandated under Section 33(2)(b) of the Industrial Disputes Act, 1947, hence, the termination order passed by the petitioner corporation is legally invalid. Further, though the 2nd respondent has not averred anything with regard to non employment in the claim petition, the 1st respondent is vested with the power to award back wages and for mere unauthorized absence, imposing the punishment of dismissal from service is highly disproportionate and the



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1st respondent, after taking into consideration all the above said facts and taking into note the service of about 12 years rendered by the 2nd respondent, passed the present impugned award, which does not warrants interference of this Court.

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

7. Admittedly, the 2nd respondent joined the service of the petitioner corporation as a Driver in the year 1996 and for alleged misconduct, he was subsequently dismissed from service in the year 2008. It is not the case of either party that on the date when the workman was terminated from service, there was any pending dispute, which was under conciliation. There is no material to the said fact available in the typed set of papers. It is equally not in disputed that the 2nd respondent raised the dispute only in the year 2014, after a lapse of four 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 having been raised in the year 2014, after a lapse of four years, the same 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 major argument of the 2nd respondent is that the petitioner management did not obtain necessary approval from the competent authority as mandated under Section 33(2)(b) of the Industrial Disputes Act, 1947, however, it is to be pointed out that it is not the case of the workman that there was any pending dispute. Further, the dispute raised by the 2nd respondent is barred by limitation as it has been raised after a period of about six years from the date of dismissal of the workman. Therefore, the dispute itself is not maintainable.

9. In view of the above, this Court is of the view that the impugned award dated 20.07.2016 passed in I.D.No.123 of 2014 by the 1st respondent is perverse and accordingly, the impugned award is set aside.



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WEB COPY 10. Accordingly, this Writ petition stands allowed. No costs.

Consequently, the connected Miscellaneous petitions are closed.

25.07.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

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II Additional Labour Court,
City Civil Court Annexure Buildings,
High Court Compound, Chennai – 600 104.



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M.DHANDAPANI., J.

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