



Writ Appeal No.524 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.03.2023

Coram:

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

Writ Appeal No.524 of 2023
and
C.M.P.No.4960 of 2023

The Managing Director,
Metropolitan Transport Corporation,
Division No.2,
Pallavan Illam,
Chennai-600 002.

.. Appellant

Vs.

1. The Presiding Officer,
Principal Labour Court,
Chennai.

2. V.Murugesan

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 13.04.2022 passed by the learned Single Judge, in Writ Petition No.30546 of 2013 on the file of this Court.

Writ Petition No.30546 of 2013 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records in I.D.No.726 of 2000 dated 15.12.2008 on the first respondent, Ist Additional Labour Court, Chennai and to quash the same.

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For appellant : Mr.Ramanlal, Additional Advocate General,
assisted by Mr.M.Chidambaram

For respondents: Mr.K.V.Shanmuganathan for R-2
R-1 - Labour Court

JUDGMENT

(The Judgment of the Court was delivered by S.Vaidyanathan, J)

The present appeal has been preferred by the Metropolitan Transport Corporation challenging the order passed by the learned Single Judge in W.P.No.30546 of 2013, dated 13.04.2022, in confirming the Award of the Labour Court in I.D.No.726 of 2000, dated 15.12.2008.

2. The case of the employee was that he was employed as Driver on 12.07.1995 on casual basis and that he had attained permanent status pursuant to the order of the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and that the said order was questioned by the Management by way of Writ Petition, which was withdrawn.

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5. The above view that the employee was not under suspension, was also taken by the Labour Court. It is open to the employer either to place the driver under suspension or not and the Court may interfere, however, the employee should have been paid full wages, if not placed under suspension till the date of dismissal.

6. In the present case, there was no suspension after the date of accident on 22.11.1997 till the date of dismissal on 06.09.1999. When there is no fault on the employee in terms of Section 25-B of the Industrial Disputes Act, he is deemed to be in service and he would be entitled to full wages till the date of dismissal. Definitely, this is not a case of suspension.

7. The employee has also admitted about the accident, but he would submit that there was no fatal accident and due to rain, the accident has taken place.

8. The Labour Court and the learned Single Judge, without considering the fact that the domestic enquiry was fair and proper, have set aside the order of dismissal. The Labour Court, in paragraph 8, has held that the enquiry was fair

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and proper, but subsistence allowance was not paid. The Labour Court also relied upon the decision of the Supreme Court reported in 1999 (2) LLN 640 (Capt.M.Paul Anthony Vs. Bharat Gold Mines. Ltd.). The Labour Court further held that non-payment of subsistence allowance will vitiate the suspension order.

9. As stated supra, there is no suspension at all in this case and the question of applicability of payment of subsistence allowance does not arise. Similarly, the decision referred to by the Labour Court reported in 1987 (2) LLN 847 (SC) = 1987 (4) SCC 328 (O.P.Gupta Vs. Union of India) which was relied on by the Supreme Court in the said Paul Anthony's case, may not be applicable to the facts of the case on hand.

10. Though the Labour Court has referred to the judgment of this Court reported in 2002 (1) LLN 388 (Management of Cheran Transport Corporation Ltd., Coimbatore Vs. Presiding Officer, Industrial Tribunal, Madras), and observed that there was no eye-witness, the factum that there was accident, was admitted by the employee. However, he submitted that it was not due to his negligence, but due to rain.

11. The Apex Court in AIR 1982 SC 673 = 1982 (1) SCC 143 (J.D.Jain Vs.

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Management of State Bank of India), has held that even a hear-say evidence is admissible in Labour matters. In the present case, the employee has admitted the accident, but denies that it is on account of his negligence.

12. The finding of the Labour Court on the scope of non-payment of subsistence allowance and that the employee has rendered 240 days of service in 12 calendar months and that there is violation of Section 25-B of the Industrial Disputes Act, are not relating to the case where the employees were charged under mis-conduct. Even admitting for the sake of argument that the employee is a permanent employee, the employer has chosen to proceed with the employee departmentally and the charges are held to have been proved by conducting domestic enquiry.

13. The said findings of the disciplinary authority cannot be assailed by the employee, which has also not been interfered with by the Labour Court and the learned Single Judge. Both the Courts have proceeded on the ground that the employee has completed 240 days of continuous service in 12 calendar months and that there is violation of Section 25-F of the Industrial Disputes Act and that there was non-payment of subsistence allowance, are not relating to the issue in hand.

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14. Hence, we find that the Award of the Labour Court and the order of the learned Single Judge need to be interfered with and the same are hereby set aside.

15. During the course of hearing, this Court observed that the employee having not been placed under suspension, would be entitled to wages for a period of 22 months and that the employee had also drawn wages under Section 17-B of the Industrial Disputes Act during the pendency of the Writ Petition.

16. We have suggested that a sum of Rs. 1 lakh may be paid to the employee so that it will give a quietus to the entire issue with regard to the industrial dispute in I.D.No.726 of 2000.

17. The learned Additional Advocate General appearing for the appellant/Corporation, on verbal instructions, had informed this Court that the appellant/Corporation is willing to pay a sum of Rs.1 lakh and submitted that this may not be quoted as a precedent in any other case.

18. Taking note of the submission that the employee is not entitled to any

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relief, instead of confirming the Award of the Labour Court and the order passed by the learned Single Judge, the employee is entitled to a sum of Rs.1 lakh (Rupees one lakh only) as ex-gratia in full quit for all claims, which will not be considered for any other service benefits. The appellant/Transport Corporation is directed to release the agreed amount of Rs.1 lakh within a period of one week from the date of receipt of a copy of this judgment.

19. With the above observations, the Writ Appeal is disposed of. There shall be no order as to costs. Consequently, CMP is closed.

(S.V.N., J) (R.K.M., J)
17.03.2023

Index: Yes/no

Neutral Citation: Yes/no

Speaking Order: Yes/no

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