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W.P.Nos.2647 & 19057 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM :

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

W.P.Nos.2647 & 19057 of 2017

and

WMP.Nos.2597 & 20575 of 2017

The Management,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Pallavan Salai,
Chennai – 600 002.

...Petitioner in both W.P's.

Vs.

1. The Presiding Officer,
Principal Labour Court,
Chennai – 600 104.

2. N.Elumalai

...Respondents in both W.P's.

Prayer in W.P.No.2647 of 2017: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for the records in C.P.No.293 of 2011 dated 08.10.2014 on the file of the Principal Labour Court, Chennai and to quash the same as illegal.

Prayer in W.P.No.19057 of 2017: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records in I.D.No.446 of 2004 dated 29.02.2008, on the file of the Principal Labour Court, Chennai and to quash the same as illegal.



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In both W.P's.:

For Petitioner : Mr.C.Gowthamaraj

For Respondents : No Appearance, for R2

COMMON ORDER

Since the issue involved in both the Writ petitions are interconnected, they are disposed of by way of this common order.

2. These Writ petitions are filed by the petitioner management seeking to quash the award dated 29.02.2008 made in I.D.No.446 of 2004 and the order dated 08.10.2014 passed in C.P.No.293 of 2011, both on the file of the 1st respondent.

3. The case of the petitioner is that, the 2nd respondent joined the service of the petitioner corporation in the year 1977 and was working as a conductor. On 23.05.2002, while he was on duty, certain irregularities were found in the issuance of tickets and thereby, a charge memo dated 30.05.2000 was issued to him and he was suspended from service. However, subsequently, the said suspension order was revoked and a domestic enquiry



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was conducted, pursuant to which, the petitioner management, vide order dated 09.10.2001, dismissed the 2nd respondent from service. Aggrieved by the said dismissal order, the 2nd respondent raised an industrial dispute in I.D.No.446 of 2004, in which, an award dated 29.02.2008 came to be passed by the 1st respondent, directing the petitioner management to reinstate the 2nd respondent with all other attendant benefits and continuity of service, but without back wages. Challenging the said award, the petitioner has come up with W.P.No.19057 of 2017. In the meanwhile, the 2nd respondent filed a computation petition under Section 33C(2) of the ID Act in C.P.No.293 of 2011 before the 1st respondent, seeking payment of Rs.4,18,500/- from the petitioner management and the same was allowed in part, vide order dated 08.10.2014, directing the petitioner management to pay the 1st respondent a sum of Rs.1,63,200/-. As against the said order, W.P.No.2647 of 2017 has been filed by the petitioner.

4. Learned counsel for the petitioner submitted that, for proven misconducts, the 2nd respondent was dismissed from service on 09.10.2001, only after conducting proper enquiry by affording appropriate opportunity



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and the same is evident from the exhibits marked on behalf of the petitioner corporation before the 1st respondent. While so, the 1st respondent without considering any of the above said facts, entertained the dispute raised by the 2nd respondent and directed the petitioner management to reinstate the 2nd respondent with all attendant benefits and continuity of service, but without back wages. Further, though the award was passed in the year 2008, the petitioner has come up with the Writ petition in W.P.No.19057 of 2017 only in the year 2017 which delay is due to administrative reasons. However, the the 1st respondent, without considering all the above has allowed the dispute by ordering reinstatement and also allowing the computation petition, when there was no payment of backwages and, therefore, the said orders warrant interference of this Court and accordingly, prayed for appropriate orders.

5. Though the 2nd respondent entered appearance through a counsel, there is no representation on behalf of him when the cases are called today. However, considering the period of pendency of these petitions, this Court is inclined to dispose of the same based on the materials available on record.

6. Admittedly, the 2nd respondent joined the service of the petitioner



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corporation in the year 1977 and for certain alleged misconduct, he was subsequently dismissed from service, vide order dated 09.10.2001.

7. A perusal of the material documents placed on record reveal that, though a charge memo dated 30.05.2000 came to be issued to the 2nd respondent framing five charges, however, in order to prove the said charges, except the files relating to disciplinary proceedings, no other documents were marked by the petitioner corporation on their behalf before the 1st respondent and they had not even examined single witness on their behalf to prove the charges as against the 2nd respondent and relying upon the disciplinary proceedings alone is not sufficient as the decision arrived in the said proceedings is on the basis of preponderance of probabilities in establishing the case. The 1st respondent after elaborately discussing each and every fact, gave its findings with regard to the dismissal of the workman and the same cannot be interfered with, as there is no perversity in the factual findings of the 1st respondent.

8. Further, when the award was passed in the year 2008, challenging



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the same, the petitioner has approached this Court only in the year 2017 and no proper explanation was given by the petitioner corporation for the above said delay, but merely attributing the delay to administrative reasons. Mere administrative reasons cannot be the ground for such a lengthy delay and in the absence of the delay being properly explained, the writ petition challenging the order in the computation petition deserves to be dismissed. Further, pursuant to the award dated 29.02.2008 made in I.D.No.446 of 2004, though the 2nd respondent filed computation petition under Section 33C(2) of the ID Act, claiming a sum of Rs.4,18,500/-, however, the 1st respondent after elaborately discussing each and every aspects in para 9, passed an order dated 08.10.2014, directing the petitioner corporation to pay the 2nd respondent only a sum of Rs.1,63,200/-, which cannot be interfered with as the same is just and reasonable.

9. However, in view of the fact that the workman had superannuated on 28.2.2010, needless to say that the petitioner is bound to pay all the terminal benefits to the workman deeming the workman to have continued in service for the purpose of arriving at the terminal benefits and the



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petitioner corporation is directed to settle the entire terminal benefits to the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order, if not settled already.

10. For the reasons aforesaid, these Writ petitions stand dismissed.

No costs. Consequently, the connected Miscellaneous petitions are closed.

14.07.2023

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

To

The Presiding Officer,
Principal Labour Court,
Chennai-104.



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M.DHANDAPANI, J.

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