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WP.Nos.27982 & 23577 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM :

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

W.P.Nos.27982 & 23577 of 2017
& W.M.P.Nos.30025 & 24720 of 2017

The Commissioner
Greater Chennai Corporation,
Ripon Buildings,
Chennai-600 003.

...Petitioner in both WPs

Vs

1.The Presiding Officer,
I Additional Principal Labour Court,
Chennai-600 003.

2.Tmt. S.Esther

...Respondents in both WPs.

PRAYER in W.P.No.27982 of 2017 : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writs of Certiorari, or any other appropriate Writ or Order in the nature of a Writ, to call for the orders on the file of the 1st Respondent herein in C.P.No.73 of 2016 and quash the impugned order dated 21.08.2017 as highly illegal.



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PRAYER in W.P.No.23577 of 2017 : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writs of Certiorari, or any other appropriate Writ or Order in the nature of a Writ, to call for the orders on the file of the 2nd Respondent herein in C.P.No.262 of 2008 and quash the impugned order dated 12.07.2018 passed by the 2nd respondent herein.

For Petitioner in
both WPs : Mr.S.Gopinathan

For Respondent-2 in
both WPs : Mr.S.Ravi

COMMON ORDER

These petitions are filed by the petitioner seeking to quash the award dated 12.07.2013 & 21.08.2017 made in I.D.No.262 of 2008 and C.P.No.73 of 2016 respectively on the file of the first respondent.

2. For the sake of convenience, the petitioner herein will be referred to as “*Petitioner Corporation*”. The respective 1st respondent will be referred to as “*Labour Court*” and the respective 2nd respondent will be referred to as “*Workman*” .



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3. The facts in brief are:-

The 2nd respondent was appointed as a sweeper by the Ambatur Municipality on a consolidated basis. Due to her unauthorised absence to work for a long period, the corporation initiated a disciplinary proceedings against her and subsequently terminated her from service. However, on 19.12.2006, she came forward with a representation seeking re-appointment which was not entertained by the corporation. Aggrieved by which, the 2nd respondent raised an industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 before the 1st respondent/Labour Court, in I.D.No262 of 2008, wherein, the Labour Court had ordered reinstatement with backwages, continuity of service and all other attendant benefits. Challenging the same, the Writ Petition in W.P.No.23577 of 2017 has been filed by the management. Subsequently, the 2nd respondent filed a computation petition in C.P.No.73 of 2016 before the Labour Court, wherein, the Labour Court has directed the petitioner corporation to pay a sum of Rs.11,88,654/- to the 2nd respondent. Challenging the same, the Writ



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Petition in W.P.No.27982 of 2017 has been filed.

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4. Learned counsel for the petitioner corporation would submit that the workman was appointed as a sweeper in the petitioner corporation only on temporary basis and that there was no employer-employee relationship between the petitioner corporation and the workman and therefore, the workman is not entitled for the relief of the impugned award passed by the Labour Court for reinstatement with backwages and continuity of service as also the consequential claim sought by means of the computation petition. Accordingly, he prays for allowing these Writ Petitions.

5. Per Contra, learned counsel for the workman would submit that the workman was on medical leave during the period in which the workman was alleged to have been unauthorizedly absent. In fact the said medical leave was availed by the workman only after obtaining due permission from the petitioner corporation and hence, the said period cannot be said to be the period of unauthorized absence on the basis of which the workman was illegally terminated. Further, no proper enquiry was conducted by petitioner





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have been adduced by the petitioner corporation in order to disprove the case of the petitioner. Based on the said award the workman has filed a claim petition in C.P.No.73 of 2016 wherein the petitioner has been directed to pay the computed amount.

8. As is evident from the materials available on record as also the impugned order, no documents have been produced by the petitioner corporation to substantiate their claim with regard to non-entitlement of the workman to receive the benefits. Further, there is no contra materials disputing the proof adduced by the workman. In such a scenario, the Labour Court has rightly held that the enquiry has not been conducted in a proper manner and, therefore, the termination of the workman is bad and that no opportunity of personal hearing was given to the workman. Even before this Court, there is no materials put forth by the management to prove its case.

9. However, it is to be pointed out that the workman was on contractual basis and not a permanent employee. Such being the case, the award of backwages is impermissible and, therefore, on the concept of “No



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Work No Pay”, this Court is inclined to modify the award in I.D.No.262 of 2008 by directing the petitioner corporation to reinstate the workman in service with continuity of service, which would be reckoned for the purposes of regularisation and other terminal benefits, if any. However, insofar as backwages is concerned, the workman would not be entitled for the same. Accordingly, W.P. No.23577 of 2017 is disposed of in the above terms. W.P.No.27982 of 2017 is filed assailing the order passed on the claim under Section 33-C(2) claiming the backwages. It is to be pointed out that a petition under Section 33-C(2) would be permissible for computation of monetary value insofar as any pre-existing right is available to the workman. But this Court having set aside the backwages ordered, no right would enure on the workman to claim backwages by filing a claim petition. Therefore, necessarily W.P.No.27982 of 2017 deserves to be allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No
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M.DHANDAPANI,J

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To

The Presiding Officer,
I Additional Principal Labour Court,
Chennai-600 003.

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