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W.A.No.2266/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 19-10-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.2266 of 2023

R.Chandramohan

...

Appellant

-VS-

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

2.The Management of Metropolitan Transport Corpn.,
Pallavan Salai, Chennai-600 002.
(formerly known as the Management of
Metropolitan Transport Corporation,
Chennai Dn.II, Ayanavaram,
Chennai – 23)

...

Respondents

Appeal under Clause 15 of the Letters Patent against the order, dated
26.09.2007, passed in W.P.No.46234 of 2006.

For Appellant : Mr.S.Ravi

For Respondent 2 : Mr.C.Gouthamaraj



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JUDGMENT
(By *S.Vaidyanathan,J.*)

Against the award of the I Additional Labour Court, Chennai, dated 27.02.2006, passed in I.D.No.111 of 2000, that directed the appellant employee to be reinstated in service, after setting aside the order of dismissal, with full back-wages, continuity of service and other attendant benefits, the respondent Management filed the Writ Petition and the same was allowed by the learned single Judge on 26.09.2007 setting aside the award of the Labour Court, on the ground that the employee did not apply the brake immediately; that the bus was driven in a rash and negligent manner; and that the Labour Court ought not to have granted the relief to the employee. Accordingly, the order of termination passed by the Management was restored. Aggrieved over the said order of the learned single Judge, this Writ Appeal has been filed by the employee.

2. The case of the appellant employee was that he joined the services of Tamil Nadu Transport Corporation as Driver in the year 1986 and, in 1989, he joined Pallavan Transport Corporation, after bifurcation. He was suspended from service on 16.10.1988, alleging that due to an accident, which he caused, one motorist died. A Charge Memo was issued to the employee, for which the employee submitted an



explanation. Since the explanation was not satisfactory, the Management held a domestic inquiry, wherein it was held that charge were proved.

3. Pursuant to the order of dismissal from service, an industrial dispute was raised, which resulted in the award of the Labour Court, directing reinstatement of the employee in service with full back-wages and continuity of service.

4. Appellant employee would contend that as the Management had obtained interim stay in the Writ Petition, a petition to vacate the interim stay and another petition for wages payable under Section 17-B of the Industrial Disputes Act, 1947, in short, the Act", were filed, but, instead of disposing of the petition under Section 17-B of the Act, the main Writ Petition itself was disposed of by the learned Single Judge, which was contrary to the decision of the Supreme Court in *Workmen of Hindustan Vegetable Oils Corporation Ltd. v. Hindustan Vegetable Oils Corporation Ltd.*, 2000-II-LLJ 792, wherein it was categorically held that when an application under Section 17-B of the Act has been filed, the same has got to be disposed of before final orders are passed in the Writ Petition. However, in this case, within two months from the date of filing, the principal Writ Petition itself was disposed of.

5. The case of the respondent Management is that the employee caused an accident, which resulted in the death of a motorist, for which the Corporation has to pay more than Rs.7.00 lakhs as compensation to the family of the deceased. It has been further stated that before the Motor Accident Claims Tribunal, the Management had



taken a stand that the driver was not at fault. Though the Management has disputed the entry of the employee into service as 1986 and contended that the employee joined the services in 1988, there is no averment in the pleadings that the employee had not joined the services in 1986.

6. This Court, while hearing the arguments, has suggested as to why terminal benefits alone cannot be paid to the employee for the actual services rendered by him. On instructions from the Management, it has been stated that since the employee had caused the accident and that it was a loss to the Corporation by way of compensation to the family of the deceased, the employee would not be entitled to any benefit. It is also submitted that even assuming that the actual service has to be taken into account for the purpose of grant of pensionary benefits, the employee was on loss of pay for a period up to 1 year 7 months and 28 days. However, the learned counsel for the Management fairly submitted that though the employee was on loss of pay, the said period was regularised.

7. The Labour Court has rendered a finding of fact that the employee would be entitled to the relief. Though the award of the Labour Court runs contrary to the evidence on record, we are of the view that taking into account the past services in which the employee did not suffer major punishments and that the employee has rendered services at the Management, the punishment of dismissal from service needs to be modified into one of compulsory retirement for the purpose of getting only terminal



benefits, such as gratuity and pension for the actual services rendered. Whether the employee had joined the service in 1986 or 1988, the fact remains that the employee has completed the service of 10 years and above while taking into account the leave on loss of pay, which period has been regularised by the Management. Hence, in order to give a quietus to the matter and shorten the life of the litigation and also taking into account the fact that the learned single Judge had not given preference to the petition filed under Section 17-B of the Act contrary to the decision of the Apex Court in *Workmen of Hindustan Vegetable Oils Corporation Ltd.*, referred to supra, we modify the award of the Labour Court and also the order of the learned single Judge with a direction to the employer to take into account the total of period of service rendered by the employee as 10 years and grant gratuity and pensionary benefits for the actual services rendered, treating the period of punishment as modified into one of compulsory retirement instead of dismissal from service. We make it clear that the employee is entitled to pensionary benefit from 01.10.2023 and not arrears.

8. Writ Appeal is disposed of accordingly. No costs.

Index : Yes/No
Internet : Yes/No
dixit

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