



W.A. No.3666 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.A. No. 3666 of 2019

&

C.M.P. No. 23334 of 2019

The Management,
Metropolitan Transport Corporation,
(Formerly Pallavan Transport
Corporation Limited.),
PallavanSalai, Chennai 600 002.

..Appellant

Vs.

1. Mr.R. Alagarsamy

2. The Presiding Officer,
III Additional Labour Court,
Chennai 600 104.

..Respondents

Prayer: Writ Appeal as against the order dated 19.01.2018 passed in W.P.

No. 2144 of 2010.



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For Appellant :: Mr.Ramanlal,
Addl. Advocate General
assisted by Mr.Vinod Raj
For Respondents :: Mr.V. Ajay Khose for R1

J U D G M E N T

S. VAIDYANATHAN,J.

AND

J. SATHYA NARAYANA PRASAD,J.

The present appeal has been preferred as against the order dated 19.01.2018 passed by the learned Single Judge by which the writ petition was partially allowed by setting aside 10% of backwages granted by the Labour Court while confirming the grant of relief of reinstatement with continuity of service. Further, the appellant Corporation was directed to make recovery of 10% backwages, if already paid and also to make employer's contribution towards PF admissible to the workman.

2. The workman had joined the service of the appellant Corporation as Conductor on 28.11.1975. While he was on duty on 09.09.1994, on inspection by Checking Inspector, it was found that the workman had issued tickets to three passengers, which tickets were already sold and failed to fill up the stage in the Traffic Return and therefore, he was charged for irregularity of issuance of sold tickets. Based on the Checking Inspector's



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report, the workman was placed under suspension on 12.09.1994 and thereafter, on 14.09.1994, a charge memo was issued pursuant to which domestic enquiry was conducted and on completion of the enquiry, an enquiry report was submitted on 10.02.1995 holding that the charges were proved. A second show cause notice was issued on 12.05.1995 to which the workman had also given his representation and on 21.06.1995, an order terminating the service of the workman was issued. The appeal filed against the order of termination was also rejected by order dated 08.10.1995. An industrial dispute was raised by the 1st respondent in I. D. No. 186 of 2002 and the 2nd respondent/Labour Court, after considering all the materials on record, passed an award on 29.05.2009 directing reinstatement of workman with continuity of service and 10% backwages, as against which, the writ petition came to be filed by the Management. The Writ Court confirmed the award of the Labour Court to the extent of granting reinstatement with continuity of service but set aside 10% backwages granted by the Labour Court.

3. Heard both sides.

4. Recapitulating the facts of this case, based on the Checking

Inspector's Report, the workman was placed under suspension. The charge



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memo dated 14.09.1994 was issued. A full fledged domestic enquiry was conducted and an order of removal from service was issued and the appeal filed against the dismissal order was also rejected by order dated 08.10.1995. Aggrieved by the dismissal order, an industrial dispute was raised before the Labour Court and Labour Court, by award dated 29.05.2009, directed reinstatement of the workman with continuity of service and with 10% backwages. The Labour Court came to the conclusion that the passengers have not been examined and did not agree with the fact that the Checking Inspector had gone into the box and stated about the re-issuance of tickets by the workman. Taking note of the submissions of parties, the award of the Labour Court was interfered with by the learned Single Judge in the writ petition filed by the Transport Corporation to the extent of setting aside 10% backwages and the relief of reinstatement with continuity of service has been left intact.

5. Soon after the order of dismissal passed by the employer, an approval petition should have been filed before the authority. But, nothing has been stated by the employer as to the stage of the approval petition and the learned counsel for the workman would submit that no approval petition had been filed. However, both parties have not taken such a plea in order to enable us to consider the applicability of the decision of Constitution Bench



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in *Jaipur Zila Sahakari BhoomiVikas Bank Limited V. Ram Gopal*

Sharma and others reported in (2002) 2 SCC 244.

6. Eventhough in the counter statement filed before the Labour Court, the employer has taken a plea that the workman was punished 49 times in the past for misconduct, the same has not been reflected in the order dated 21.06.1995. Unless the employee is put on notice with regard to the past misconduct, that cannot be taken note of while imposing the punishment of dismissal from service. Except the statement of the employer with regard to similar misconducts, there is no evidence produced. As there was delay in raising the industrial dispute and observing that the scope of judicial review with regard to interference of findings of Labour Court is very limited while exercising power under Article 226 of the Constitution of India, the learned Single Judge set aside 10% backwages granted by the Labour Court while upholding the relief of reinstatement with continuity of service. Apart from that, powers under Section 11A of Industrial Disputes Act, 1947 and the scope of Labour Court in interfering with the punishment under 11A of the said Act is also very limited. The Courts have held that if the punishment is shockingly disproportionate, the same can be interfered with. If there is a delay in raising a dispute, the delay can be taken note of while depriving backwages and meritorious cases cannot be thrown out on



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technicalities. If the delay is enormous and could not be explained, then the relief to the employee be rejected as employer cannot be asked to retain the records endlessly before a particular time. In the case on hand, the Labour Court has deprived 90% of the backwages, and **10% backwages granted by the Labour Court has also been deprived by the learned Single Judge** and we do not find any error in the order passed by the learned Single Judge.

7. It is brought to the notice of this Court that the workman has attained the age of superannuation on 30.06.2012. Pursuant to the award of the Labour Court, which has been modified by the learned Single Judge, the employee would be entitled to backwages from the date of the award till the date of superannuation.

8. Across the bar, Mr.Ramanlal, learned Additional Advocate General for Management would submit that as observed by the learned Single Judge in paragraph No.10 of the order, the Management is willing to contribute the employer's contribution payable to the EPF Trust without interest and that the same may be adjusted from backwages payable from the date of the award till 30.06.2012 and that the Trust may be directed to pay pension at the earliest point of time.



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9. Since we agree with the finding of the learned Single Judge, we reject the appeal with the following directions:

“(i) Backwages from the date of the award till 30.06.2012 and PF amount payable to the PF Trust shall be paid within a period of four months from the date of receipt of a copy of this order;

(ii) The employer is expected to deposit the PF amount to the PF Trust to enable PF Trust to pay pension to the employee;

(iii) Since interest has not been directed to be paid to the Trust, the eligible amount to the Trust for the purpose of paying the pension alone should be taken into account and that the employee cannot demand interest.

(iv) The order of the learned Single Judge is confirmed and the employer is expected to implement the award as modified by this Court in W.P. No. 2144 of 2010 within four months to avoid prosecution under Section 29 of the Industrial Disputes Act, 1947.”

No costs. Connected C.M.P. is closed.

(S.V.N.J.) (J.S.N.P.J.)

nv

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