



W.P.No.33388 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.33388 of 2018

R.Asokan

... Petitioner

Vs.

1. The Management
Metropolitan Transport Corporation,
Pallavan Illam,
Chennai – 600 002.

2. The Special Deputy Commissioner,
Labour Office,
DMS Compound, Teynampet,
Chennai – 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, calling for the records pertaining to the order passed in I.D.No.779 of 2015 dated 12.07.2018 on the file of the II Additional Labour Court at Chennai and quash the same.



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For Petitioner : Ms.M.D.Leelavathi

For Respondent
No.1 : Mr.R.Balaji
Standing Counsel

For Respondent
No.2 : Mr.D.Gopal
Government Advocate

ORDER

The writ petitioner joined the service of the Tamil Nadu State Metropolitan Transport Corporation / first respondent as a driver on 18.10.1989. Since he absented for duty from 01.05.2008 onwards, a charge memo was issued to him and a domestic enquiry was conducted. Since the writ petitioner did not attend the domestic enquiry, second show cause notice dated 25.03.2009 was issued through registered post with acknowledgment card. Since no explanation was given by the writ petitioner, he was terminated from service on 10.06.2010. Thereafter the Management filed an approval petition under Section 33(2)(b) of the ID Act, before the Deputy Commissioner of Labour in A.P.No.60 of 2010 which was allowed on 27.12.2012 after hearing both the parties. Thereafter, the petitioner filed a petition under Section 2A(2) of the Industrial Dispute Act 1947, in I.D No.779 of 2015 before the II Additional Labour Court claiming



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continuity of service, backwages and other attendant benefits. The Presiding Officer, Labour Court, Chennai by award dated 12.08.2018 dismissed the petition filed by the writ petitioner on the ground that domestic enquiry was conducted properly and that since the petitioner absented himself from attending duty, he was not entitled for continuity of service with backwages and that he could get only the other benefits attendant with his duty period. Challenging the said award the present writ petition is filed.

2. Ms.M.D.Leelavathi, learned counsel for the writ petitioner contended that the petitioner was not informed of the date of enquiry and that the Management terminated him from service without mentioning the date in the final order. It is her contention that the writ petitioner had put in 21 years of unblemished service and that the Management terminated him only on the ground of unauthorised absence. According to her, the writ petitioner actually submitted a medical certificate along with leave letter on medical grounds to the Branch Manager Central Depot and he in turn did not submit it to the Head Office. She would therefore contend that the order of termination by the Management is totally contrary to law and the Labour Court also did not consider all these aspects.



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3. Mr.R.Balaji, Standing Counsel appearing for the first respondent contended that the writ petitioner did not appear for enquiry proceedings even though he was served with notice. In fact, he was set ex-parte after granting sufficient opportunity to him.

4. Mr.D.Gopal, learned Government Advocate, appearing for the second respondent would contend that the petitioner absented himself from attending the duty from 05.09.2019 onwards and he did not have any inclination to join duty. He would therefore submit that the petitioner cannot maintain the present writ petition.

5. By proceedings dated 18.06.2019, the first respondent had granted Gratuity and Provident Fund from 18.10.1989 to 10.06.2010 based on the resolution passed by the Board and approved by the Managing Director. The only contention of the writ petitioner is that since the petitioner has put in 21 years of service, he must be given 50% of pension. A perusal of the entire record shows that the petitioner was actually served with notice for the domestic enquiry and on the first date of hearing, he was late for the enquiry proceedings, but on the subsequent hearings, he did not attend at all. Subsequently, the second show cause notice came to be served on him. The petitioner's contention that he actually submitted medical certificate along with leave letter has not been substantiated by adducing acceptable evidence before the Labour Court. The



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Labour Court has also taken all the aspects into account before dismissing the petition filed by the writ petitioner under Section 2A(2) of the Industrial Disputes Act.

6. The findings of the Labour Court are acceptable and therefore, the Writ Petition is dismissed. No costs.

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Index: Yes/No
Speaking/Non-Speaking order
adl

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R.HEMALATHA, J.

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