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W.P. No.32077 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. No.32077 of 2012
and W.M.P. No.1 of 2012

The Management,

The Metropolitan Transport Corporation,

Pallavan House, Anna Salai, Chennai.

.... Petitioner.

vs.

1. M. Balaraman

Ex-Conductor - PTC / MTC

2. The Presiding Officer,

III Additional Labour Court,

City Civil Court Buildings, Chennai.

... Respondents.

PRAYER: This Writ petition has been filed challenging the order passed by the Labour Court in Claim Petition No.934 of 2010 on the file of the III Additional Labour Court, City Civil Court Buildings, Chennai dated 09.04.2012.

For Petitioner : Mr. M.R. Dharani Chander.



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For Respondents : R2 - Court

Mr. B. Manoharan [for R1]

ORDER

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This Writ Petition has been filed by the petitioner to call for the entire records in C.P. No.934 of 2010 dated 09.04.2012 on the file of the 2nd respondent and to quash the same.

2. According to the Writ petitioner, the 1st respondent was appointed as Conductor on 31.12.1979 in the petitioner's Management. From the beginning, the 1st respondent was habitual absentee and he was absent duty from 11.08.1992 without applying any leave. Thereafter, a memo was issued and disciplinary enquiry was ordered and based on the disciplinary proceedings, he was removed from service on 02.06.1993. Thereafter, the 1st respondent raised an industrial dispute in the year 2005 in I.D. No.515 of 2005 before the Labour Court. The Labour Court passed an award dated 13.07.2007 by reinstating the 1st respondent without backwages and with continuity of service and all other attendant benefits. The said award passed by the Labour Court dated 13.07.2007 in I.D. No.515 of 2005 is under challenge and now it is SR stage. While so, the workman filed a petition to compute the salary from the date of industrial dispute till the filing of this petition. The Labour Court without any basis calculated the salary of the 1st



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respondent as Rs.19,252/-, which is incorrect. At the time of termination of service, the 1st respondent was getting salary of Rs.2,283.90. Therefore, the order passed by the Labour Court is liable to be set aside.

3. The learned counsel appearing for the petitioner would submit that the 1st respondent was appointed as 'Conductor' in the petitioner Management and thereafter, due to his continuous absence, he was removed from service and the same was challenged before the Labour Court in I.D. No.513 of 2005 and the same was allowed by directing the petitioner to reinstate the 1st respondent without any backwages and with continuity of service and all other attendant benefits. The said award was challenged through a Writ petition and the same is in SR stage. In the meantime, the 1st respondent has filed a Claim Petition stating that the 1st respondent is not getting salary from the Management and his junior one Anthony Sami is receiving a sum of Rs.19,252/- per month and he is entitled to the salary on par with his junior Anthony Samy and the same was allowed by the Labour Court. In fact, the petitioner was drawn a salary of Rs.2,930/- at the time of his termination. Therefore, he is only entitled to that salary and he is not entitled to salary on par with his junior Anthony Samy, but the Labour Court failed to consider the same and awarded reinstatement from the date of order of the Labour Court in industrial dispute dated 13.07.2009 till the date of presentation of this petition



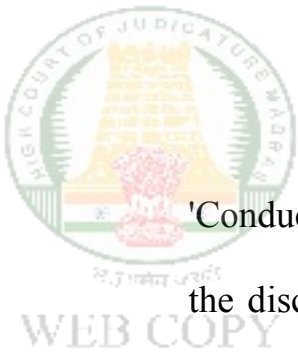
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and awarded a sum of Rs.2,61,814/-. Therefore, the above said order is liable to be set aside.

4. The learned counsel appearing for the 1st respondent would submit that the 1st respondent was working as Conductor under the petitioner's management and he was removed from service due to his continuous absence and the same was challenged through an I.D. No.513 of 2005 and the Labour Court ordered to reinstate the 1st respondent through its order dated 13.07.2009 without any backwages, but with continuity of service and all other attendant benefits. While so, the petitioner Management have not provided any salary to the 1st respondent, thereby he filed a claim petition to award salary on par with his junior one Anthony Samy and thereby, the monthly salary was calculated as Rs.19,252/- and the amount was calculated for 13 months and 18 days from the date of order of the industrial dispute till the filing of the petition and worked out to Rs.2,61,814/-. Therefore, the order passed by the Labour Court is in order and the present Writ petition is liable to be dismissed.

5. This Court heard both sides and perused all the materials available on record.

6. It is an admitted fact that the 1st respondent was working as



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'Conductor' in the petitioner's Management and due to his continuous absence, the disciplinary enquiry was conducted and he was terminated from service.

The said award was challenged through an industrial dispute in I.D. No.513 of 2005 and the same was ordered in favour of the 1st respondent by ordering reinstatement with continuity of service and all other attendant benefits, but without backwages. The 1st respondent has not challenged the said order and the department challenged the order, but still it is in SR stage and not even numbered the Writ petition. Thereafter, the 1st respondent has filed a Claim petition from the date of award for payment of salary on par with his Junior one Anthony Samy. The salary of the said Anthony Samy has not been disbursed by the Writ petitioner. Before the Labour Court, on the side of the Workman, he was examined as PW1 and marked Ex.P.1 to Ex.P.7 and on the side of Management, Ex.R.1 was marked. The Labour Court after analysing both sides and perusing the documents, has passed an order to pay salary from the period from the date of dismissal of the industrial dispute till the filing of the Claim petition and awarded a sum of Rs.2,61,814/- for a period of 13 months and 18 days by taking the salary of one Anthony Samy as Rs.19,252/- per month. Therefore, the order passed by the Labour Court is in order and warrants no interference.

7. Moreover, the employee, who is the 1st respondent herein, also



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retired from service by that time. Though the learned counsel appearing for the petitioner vehemently contended that they preferred an appeal as against the award passed by the Labour Court, the same is still in SR stage. The date of award is in the year 2007 and till, they have not produced the Writ petition number, even after the order passed by the Labour Court in Claim petition. Since there is no any challenge as against the award of the Labour Court and the writ petition has not been numbered and as on date, no writ petition is pending, it is not appropriate to accept the contention of the writ petitioner.

8. The learned counsel appearing for the Writ petitioner management would submit that since they preferred an appeal as against the main I.D. No.513 of 2005, this Court can observe that if any favourable order passed in favour of the Writ petitioner, the 1st respondent is at liberty to recover the same from the petitioner. Since the Labour Court award has not been challenged so far and it is for the petitioner to approach the concerned Court at the time of arguments in the Writ petition, if it is numbered. Therefore, his contention cannot be accepted. He can put forth his arguments before the concerned Court, where the Writ petition is filed challenging the main industrial dispute.

9. With the above said observations, the Writ petition is dismissed. No



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costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order/non-speaking order
mjs

To

The Presiding Officer, III Additional Labour Court, Chennai.

P.DHANABAL, J.,

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