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W.P.No.38009 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

W.P.No.38009 of 2016
and W.M.P.No.32592 of 2016

The Management,
Metropolitan Transport Corporation
(Chennai) Limited,
Pallavan Illam, Anna Salai,
Chennai - 600 002.

...Petitioner

Versus

1.K.Perumal

2.The Presiding Officer,
III Additional Labour Court,
City Civil Court Annexure Building,
High Court Compound,
Chennai - 600 104.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorari calling for the records pertaining to the order passed in C.P.No.1580 of 2010 dated 18.03.2016 on the file of the second respondent herein and quash the same.

For Petitioner : Mr.G.Gauthamaraj

For R1 : Mr.S.T.Varadharajalu

For R2 : Labour Court



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ORDER

This writ petition has been filed by the Petitioner/Management challenging the order in C.P.No.1580 of 2010, dated 18.03.2016 passed by the second respondent.

2. The brief facts of the case are that the first respondent was working as driver with the petitioner corporation. The allegations as against the first respondent are that he was irregular in attending his duty and his absence is habitual. The Petitioner/Management by way of Certified Standing Order under Section 25(vi) has taken into account for 8 consecutive days of absence without prior intimation of leave.

3. The Petitioner/Management has incurred revenue loss by non-operating the buses on time. According to the Petitioner/Management by invoking Section 25(vi) & 25(XL iii) of the Certified Standing Orders. The first respondent by absenting himself for the duty from 21.03.2007, the Petitioner/Management issued a charge memo calling explanation for the conduct of the first respondent for continuous absent. The first respondent did not file any



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4. The Petitioner/Management has conducted a domestic enquiry as against the first respondent by following the principles of natural justice and following procedure contemplated as per the Certified Standing Order. The domestic enquiry was completed. The service of the first respondent was terminated on 18.08.2008. The main contention of the Petitioner/Management is that the first respondent was absented himself nearly for 515 days which cannot be taken very likely. There was no justification from the first respondent for the said absence.

5. It is also contented by the learned counsel for the petitioner that since the common issue of employees which was pending before the Special Deputy Commissioner of Labour, Teynampet, Chennai, the Petitioner/Management has filed a petition in A.P.No.532 of 2011 before the competent authority. As per Section 33(2)(b) of the Industrial Dispute Act, 1947 in form 'T', one month salary was given to the first respondent and during the domestic enquiry, the Petitioner/Management has marked 7 documents as exhibits P1 to P7 whereas the respondent does not file any documents on his side. However, the Special Deputy Commissioner of Labour rejected A.P.No.532 of 2011 on 31.07.2013



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filed by the Petitioner/Management.

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6. According to the Petitioner/Management, the first respondent has filed the C.P.No.1580 of 2010 before the second respondent without ascertaining and the second respondent has passed an order in favour of the first respondent. A sum of Rs.2,96,720/- to be paid to the first respondent with regard to the backwages and other benefits. According to the second respondent, it is Rs.2,96,720/- for the period from 2008 to 2010. The facts are not disputed by the second respondent.

7. The learned counsel for the Petitioner/Management would fairly contented that as against the order in writ petition No.25406 of 2016, a writ appeal in W.A.No.1871 of 2022, dated 01.02.2023 was filed by the Petitioner/Management, the Division Bench of this Court has passed the following order wherein the relevant Paragraph Nos.8 & 9 are extracted hereunder:-

"8. Taking note of the submission made by the learned counsel for the first respondent/workman that the workman is willing to give up 50% of backwages and also the affidavit filed to that effect, the employer is expected to



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reinstate the employee on or before 1st March, 2023. The workman would be entitled to continuity of service and consequential benefits as there is no order of dismissal in the eye of law.

9.The employer is expected to remit a portion of Provident Fund contribution payable to the trust from 50% of backwages and shall take responsibility of remitting the same to the Provident Fund trust on or before 31st March, 2023 failing which interest is payable by the employer on the Provident Fund contribution."

8. In view of the findings given by the Division Bench of this Court, the first respondent is entitled for 50% of backwages and reinstatement.

9. With the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

19.01.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rjr



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N.SENTHILKUMAR, J,

rjr

To
The Presiding Officer,
III Additional Labour Court,
City Civil Court Annexure Building,
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