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W.A.No.678 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM

**THE HONONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONONOURABLE MR. JUSTICE P.DHANABAL**

**W.A.No.678 of 2024
and
C.M.P.No.4698 of 2024**

The Management,
Metropolitan Transport Corporation
Chennai Ltd.,
Pallavan Illam, Anna Salai,
Chennai - 600 002

..Appellant

Vs.

1. The Special Deputy Commissioner
of Labour,
DMS Compound, IV Floor, Teynampet,
Anna Salai,
Chennai - 600 002.

2. R.S.Gokulan,
Ex-Senior Office Assistant of MTC,
No.31/1, Choolai 3rd Street,
Ayanavaram,
Chennai - 600 023.

... Respondents

Writ Appeal filed under Clause 15 of the Letters patent against the
order passed by this Court in W.P.No.15902 of 2019 dated 21.07.2022.



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For Appellant : Mr.R.Ramanlaal,
Additional Advocate General
for
Mr.R.Balaji

For Respondents : Mr.T.Chezhian,
Government Advocate for R1
Mr.K.Malaikannu for R2

JUDGMENT

(The judgment of the Court was delivered by J.Nisha Banu,J)

This appeal has been filed against the order passed in W.P.No.15902/2019 dated 21.07.2022, by which, the rejection of approval petition by the Labour Court was confirmed and ordered that the 2nd respondent/workman is entitled for reinstatement with 50% backwages for the non-working period and the non-working period shall be treated as a continuity of service for the purpose of pensionary benefits with corresponding pay increment.

2. The case of the appellant is that the 2nd respondent worked as a Senior Office Assistant at the Head Office in the appellant Corporation. He was unauthorizedly absent from duty on several occasions. He was absent for more than one year and six months. Hence, the appellant initiated disciplinary proceedings against the 2nd respondent. A show cause notice sent to him, was returned as unserved. Therefore, notice was



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affixed in the depot notice Board, but the 2nd respondent did not submit his explanation. After affording opportunity to the 2nd respondent, the disciplinary enquiry was conducted. The charges against the 2nd respondent held proved. The appellant decided to terminate the 2nd respondent from service and the same was informed to the 2nd respondent. However, the 2nd respondent did not turn up to the Management. Hence, the Management terminated his service on 02.02.2009. The Management filed approval petition before the 1st respondent, but the same was rejected. Aggrieved by the same, the Management filed a writ petition, which was dismissed. Hence, the present Appeal.

3. Learned counsel for the appellant would state that the 2nd respondent is a habitual absenter and on several occasions, he was warned and punished for the same. He never changed his habit of unauthorized absence to duty. Hence, disciplinary proceedings was initiated and the 2nd respondent was terminated from service, after affording opportunity to him. He would further state that there was no dispute pending at the time of termination, therefore, the Management did not file any approval petition at that time. However, the 2nd respondent



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filed a petition under section 33(a) of the Industrial Disputes Act. Therefore, the Management was forced to file Approval Petition and the same was rejected only on technical grounds and not on merits. The writ petition filed against the same was also dismissed without considering that the approval petition was rejected mechanically. Hence, the learned counsel would pray to allow the appeal.

4. Per contra, the learned counsel appearing for the 2nd respondent would state that the Management removed the 2nd respondent from service on 02.02.2009. Only after nearly eight years from the date of termination, the approval petition was filed seeking approval of his removal from service as provided under section 33(2)(B) of the Industrial Disputes Act. Hence, the 1st respondent has rightly rejected the approval petition and the writ petition filed against the same was also dismissed. Therefore, he would pray to dismiss the appeal.

5. Heard the learned counsel for the appellant, the learned Government Advocate appearing for the 1st respondent, the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6. It is not in dispute that the 2nd respondent was terminated from



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service on 02.02.2009 and only after nearly eight years, the Management filed a petition seeking for approval of termination of the 2nd respondent.

The reasons stated for removal from service is that the 2nd respondent is a habitual absenter. It is the contention of the Management that already 4 times, the 2nd respondent had taken leave without getting permission. For the first time, warning was given to him vide proceedings dated 14.02.2001. For the second time, he was imposed with the punishment of postponement of every year's annual increment for 3 months without cumulative effect, vide proceedings dated 15.05.2004. For the third time, he was imposed with the punishment of postponement of every year's annual increment for 12 months without cumulative effect, vide proceedings dated 13.02.2007. For the fourth time, he was imposed with the punishment of postponement of every year's annual increment for 12 months with cumulative effect, vide proceedings dated 18.09.2008. Thus, the 2nd respondent had already suffered punishments for his delinquencies.

7. Insofar as the conduct of domestic/disciplinary proceedings is concerned, it is seen that the Labour Court had given a finding that with regard to the charges, the enquiry proceedings conducted against the 2nd

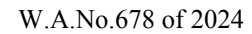


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respondent have not been submitted before the Labour Court and thus, it could not be adjudged or concluded whether the enquiry was conducted in accordance with law or in accordance with principles of natural justice. Further, the Labour Court has given a finding that as per the guidelines of the decision of the Hon'ble Apex Court reported in AIR 1978 SC 1004 (Lall Ram v. DCM Chemical Works), the 2nd respondent has not been disbursed with the one month's wage, as the Management failed to produce any supportive documents and hence, refused to grant approval. Therefore, we are of the opinion that the permission sought for by the Management to approve the removal of the 2nd respondent from service was rightly rejected by the Labour Court. Hence, the contention of the learned counsel for the appellant that the approval petition was rejected only on technical grounds and not on merits, cannot be countenanced.

8. It is seen from the order passed in the writ petition that the 2nd respondent agreed to forego 50% of the backwages and the same was already recorded by the learned Judge. The learned Judge has also given a finding that the long delay caused on the part of the Management has to be attributed only to the Management and not against the 2nd respondent, which we find reasonable and justifiable, and therefore, we are not



9. The 2nd respondent has already superannuated from service.

10. In view of the above, the Writ Appeal fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is dismissed.

(J.N.B,J.) (P.D.B., J.)
25.06.2024

The Special Deputy Commissioner
of Labour,



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DMS Compound, IV Floor,
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vsi

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