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W.A.Nos.617 & 634 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2024

CORAM

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

W.A.Nos.617 & 634 of 2023

W.A.No.617 of 2023

Krishnammal
W/o Kuppan

... Appellant

Vs.

1. The Corporation of Chennai,
rep. By its Commissioner,
Rippon Buildings,
Chennai – 00 003.

2. The Zonal Officer,
Zone-V, now Zone VIII,
Corporation of Chennai,
Kilpauk,
Chennai – 600 010.

3. The Presiding Officer,
II Additional Labour Court,
High Court Buildings,
Chennai – 600 104.

...Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the
order passed by the learned single Judge of this Court in W.P.No.34074



W.A.Nos.617 & 634 of 2023

of 2013 dated 23.07.2021.

WEB COPY

For Appellant : Mrs.Beulah John Selvaraj

For Respondents : Mr.S.Gopinath
for R1 & R2
R3-Court

W.A.No.634 of 2023

The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai – 00 003.

... Appellant

Vs.

1. The Presiding Officer,
Principal Labour Court-I,
Chennai – 600 104.

2. Krishnammal

...Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by the learned single Judge of this Court in W.P.No.6192 of 2017 dated 23.07.2021.

For Appellant : Mr.S.Gopinath

For Respondents : R1-Court
Mrs.Beulah John Selvaraj for R2

COMMON JUDGMENT

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



W.A.Nos.617 & 634 of 2023

WEB COPY

W.A.No.617 of 2023 has been filed by the employee/appellant challenging the common order passed by the learned single Judge of this Court in W.P.Nos.34074 of 2013 & 6192 of 2017 dated 23.07.2021, by which, she has challenged a portion of the award of the Labour Court made in I.D.No.482 of 2004 dated 29.05.2009 depriving backwages to her.

W.A.No.634 of 2023 has been filed by the Management, challenging the common order passed by the learned single Judge of this Court in W.P.Nos.34074 of 2013 & 6192 of 2017 dated 23.07.2021, by which, the award of the Labour Court made in I.D.No.482 of 2004 dated 29.05.2009 insofar as the grant of relief of reinstatement.

2. Since the issue involved in both the Writ Appeals are one and the same, they are disposed of by this common judgment. The ranking of the parties are maintained as the employee/appellant and the Management/ respondent in this common judgment.

3. The brief facts of the case of the appellant/employee in W.A.No.617/2023 are as follows:



W.A.Nos.617 & 634 of 2023

WEB COPY

3.1. The appellant/employee was employed as a sweeper under the Corporation of Chennai. She was appointed as a casual labour in the year 1980. Later, she was made permanent in the year 1985. She has put in 17 years of service with unblemished record of service. Since the appellant was suffering from tuberculosis, she was absent from duty from 03.07.1997. As she was very weak, she was unable to inform her superiors.

3.2. A show cause notice dated 10.07.1999 was issued by the Conservancy Inspector as to why she should not be terminated on account of her unauthorized absence. Within a week of her absence, the show cause notice had been given proposing to impose the maximum punishment of dismissal from service. The respondents issued notices dated 19.07.1997, 29.07.1997, 15.08.1997, 30.08.1997 and 24.09.1997. In all these notices, the appellant was asked to show cause as to why her services should not be terminated. Though the appellant reported for duty immediately after receiving notices, she was not permitted to join duty by the respondents. Thus, the prolonged absence is only on account of the fact that the appellant was not permitted to join duty.



W.A.Nos.617 & 634 of 2023

WEB COPY

3.3. A charge memo was issued containing three charges on 15.10.1997. An enquiry was conducted and the enquiry officer submitted his report on 30.03.1998. The respondents have predetermined the issue and decided to dismiss the appellant. Subsequently, an enquiry was conducted and she has given an explanation dated 08.09.1998 to the enquiry report. Thereafter, she was dismissed from service by order dated 12.02.1999.

3.4. Aggrieved against the same, the appellant filed an appeal on 11.03.1999 and the same was dismissed by order dated 30.05.1999. The same was approved by the Government by order dated 19.09.2021. The appellant approached the Labour Court and the Labour Court, by Award dated 29.05.2009, directed the respondent to reinstate the appellant without backwages, without continuity of service and without all other attendant benefits in I.D.No.482/2004 by the II Addl.Labour Court dated 29.05.2009. The writ petitions filed by the employee as well as the Management against the Award were dismissed by a common order. Hence, W.A.No.617 of 2023 has been filed against the common order



W.A.Nos.617 & 634 of 2023

passed by the learned Single Judge with the aforesaid relief by the employee. The Management has filed W.A.No.634 of 2023 against the common order passed by the learned Single Judge in W.P.Nos.34074 of 2013 & 6192 of 2017 dated 23.07.2021 with the aforesaid relief.

4. (i) Learned counsel for the appellant/ employee would state that the appellant/employee was absent from duty on 03.07.1997 and the disciplinary proceedings was initiated on 10.09.1997 itself, i.e., after 7 days of absence. The show cause notice was issued on 10.07.1997, 19.07.1997, 29.07.1997, 15.08.1997 & 24.09.1997 and the enquiry was conducted on 30.03.1998 i.e., one year later. The appellant was terminated from service on 12.02.1999. The appellant was not permitted to rejoin duty by the 1st respondent. No fair opportunity was given to the appellant.

(ii) Learned counsel would further submit that the appellant is an illiterate and ignorant of consequence. She has to approach somebody to submit her leave application. She was taking treatment for tuberculosis on account of which, she had taken leave. Her health condition was



W.A.Nos.617 & 634 of 2023

accepted by M.W.1 in the cross examination. However, the Labour Court ordered for reinstatement but deprived her backwages. The Labour Court found that the management also did not produce necessary documents and also found that the appellant had not committed any misconduct earlier and passed an award of reinstatement invoking Section 11A of the Industrial Disputes Act, however, without continuity of service, without backwages and without all other attendant benefits. Hence, the learned counsel would pray for grant of relief of reinstatement with continuity of service, backwages and with all other benefits.

5.(i) On the contrary, learned counsel for the respondent/Management would submit that the appellant/employees was unauthorisedly absented herself without prior permission. Though several notices were sent and a charge memo was given, no explanation was submitted. An enquiry was conducted and a report was also filed stating that the charges were proved. A second show cause notice was issued on the appellant on 09.10.1998 and the appellant submitted her explanation, but the same was found, not satisfactory. Hence, the order of dismissal from service was passed.



W.A.Nos.617 & 634 of 2023

WEB COPY

(ii) Learned counsel would further submit that the employee filed I.D. only after lapse of 3 years from the date of order of dismissal, which proves her lackadaisical attitude towards her duty which cannot be simply brushed aside on the ground of illiteracy. He would further submit that the appeal preferred by the appellant was also dismissed on 21.02.2022. The appellant was unauthorisedly absented without prior permission, if she is allowed to be reinstated into service, it would be a precedent to other employees who indulged in such misconduct and they would also seek similar relief. Hence, he would pray to dismiss the appeal.

6. Heard the learned counsel appearing on either side and perused the material available on record.

7. It is not in dispute that the employee/appellant was absent from duty from 03.07.1997 on account of illness. According to her, she was suffering from tuberculosis. Since her husband deserted her along with two children, she was also suffering mentally and physically. The health condition of the employee was accepted by the Management through M.W.1 in the cross examination.

8. Admittedly, the appellant/employee is an illiterate and she is ignorant of consequences. Even for submitting leave application, she has



W.A.Nos.617 & 634 of 2023

WEB COPY

to seek the help of others. The Labour Court has ordered for reinstatement in 2009. For more than 12 years, the employee is jobless, without any income and was made to run from pillar to post. Therefore, the contention of the learned counsel for the Management that the employee had filed I.D. only after a lapse of 3 years from the date of the order of dismissal, which shows her lethargic attitude, cannot be countenanced. It is pertinent to point out that when the enquiry was conducted, the enquiry officer had made recommendation to the Commissioner to impose lesser punishment, considering the employee's health condition.

9. From the records, it is seen that the employee had made representation to the appellate authority on 11.03.1999 and 25.10.1999 and also made appeal before the Government on 02.08.2000 and again, made representation to the Deputy Mayor on 08.02.2002. Subsequently, the employee sent a letter to C.M. Cell on 16.04.2002 and 16.05.2002, but the same was rejected on 11.06.2002. Thereafter, the petitioner raised 2A Dispute on 26.12.2003. Thus, as per the documents, it is seen that before approaching the Labour Court, the appellant/employee has put all



W.A.Nos.617 & 634 of 2023

her efforts to prove her claim before the officials.

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10. It is pertinent to point out that the absence of the employee as compared to misappropriation or negligence, is not as grave as those of actual misconduct. Once the Labour Court has taken a conscious decision to set aside the order of dismissal from service on the ground that the charges were not established in the domestic enquiry, the continuity of service with backages should have been ordered.

11. In view of the above discussion, we are of the opinion that denial of backwages and continuity of service to the employee would not be proper. The employee has also filed an additional affidavit dated 26.07.2023 wherein she had stated that she is willing to give up her claim for backwages from the date of her termination i.e., 12.02.1999 till the date of award of Labour Court i.e., 29.05.2009, provided she is given reinstatement with the benefit of continuity of service from 1980 and other attendant benefits.

12. Taking into account all the above aspects, we direct the



W.A.Nos.617 & 634 of 2023

WEB COPY

Management/respondent to reinstate the employee/appellant with continuity of service and all other attendant benefits. Insofar as the backwages for the period of non-employment is concerned, she is entitled for backwages, except the period from 12.02.1999 till the date of award of Labour Court i.e., 29.05.2009.

13. In the result, W.A.No.634 of 2023, stands dismissed and W.A.No.617 of 2023 is allowed as indicated above. No costs.

(J.N.B,J.) (P.D.B., J.)
12.04.2024

Index : Yes / No
Internet: Yes
vsi

To

1. The Presiding Officer,
II Additional Labour Court,
Chennai.
2. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai – 00 003.
3. The Zonal Officer,
Zone-V, now Zone VIII,



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WEB COPY



W.A.Nos.617 & 634 of 2023

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W.A.Nos.617 & 634 of 2023

12.04.2024