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W.P.No.4200 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.06.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.4200 of 2021
and WMP.No.4794 of 2021
and WMP.No.29440 of 2024

The Management
Metropolitan Transport Corporation
(Chennai) Ltd.,
Chennai - 600 002. ... Petitioner

Vs

A.Kumarasamy ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the order passed in I.D.No.414 of 2007 dated 16.05.2013 on the file of the III Additional Labour Court, Chennai and quash the same.

For Petitioner : Ms.T.Kavya

For Respondent : Mr.V.Rajendran



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ORDER

The above writ petition has been filed by the Transport Corporation challenging the award dated 16.05.2013 passed in I.D.No.414 of 2007 by the III Additional Labour Court, Chennai.

2. The facts as narrated by the workman before the industrial dispute may be relevant to understand the case in detail and the same is reproduced as below :

- a. The petitioner-workman had entered the services of the petitioner-Corporation on 08.01.2000 as DCL driver. On 06.04.2002, while he was on duty and driving the bus route No.38D from Tiruvottiyur to Kodungaiyur, he had caused an accident by hitting a horse cart, owing to which 2 occupants were injured, and also an old lady, who due to shock, had fainted at the spot and ultimately had breathed her last in the hospital.
- b. The workman was denied duty from the next day i.e.,07.04.2002. Though the petitioner-workman was never asked to submit his explanation in writing by the respondent-Management, the workman



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had voluntarily offered his explanation, but the same was rejected by the Management.

- c. The workman had written several letters requesting the Management to provide him duty. But his requests were denied and this denial amounts to termination of his service from 07.04.2002 onwards.
- d. With regard to the said accident, a criminal case in C.C.No.9437/2002 was registered against the workman before the VI Metropolitan Magistrate, and he was acquitted on 26.07.2005, holding that the charges laid against him was not proved by the prosecution.
- e. On 16.08.2007, the workman had sent a demand notice to the respondent to reinstate him into services and to pay him compensation and other benefits. Despite receiving the notice, the Management has not come forward to settle the dues.
- f. Thereafter, the workman was before the Conciliation Officer to arrive at a settlement in the matter but the conciliation proceedings ended in failure.
- g. Left with no other alternative, the workman raised an dispute under Section 2-A(2) of the Industrial Dispute Act, which was taken on file by the III Additional Labour Court, Chennai, in ID.No.414/2007. The



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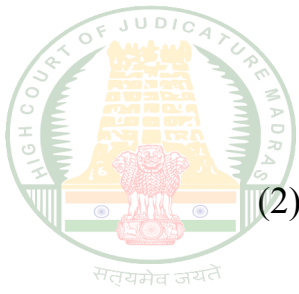
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Labour Court has passed its award on 16.05.2013, directing the Management to reinstate the petitioner with all backwages and continuity of service and all other attendant benefits including regularization of services.

Challenging the said award, the Management is before this Court.

3. The contentions raised by the petitioner-workman in the industrial dispute petition are as follows :

- (1) The learned counsel appearing for the workman would submit that the workman was under the services of the respondent-Management as a daily wage employee for 15 months from 08.01.2000 to 06.04.2002. Therefore, he is entitled to get his service regularised and have the status of a permanent employee of the Corporation as per Section 12(3) settlement, which was in force between the Management and the Employees Union. Under this agreement, every employee who has put in continuous service of 240 days under the opposite party is entitled to the regularization as and when the vacancies arise and therefore, the workman cannot be terminated without following the procedure.



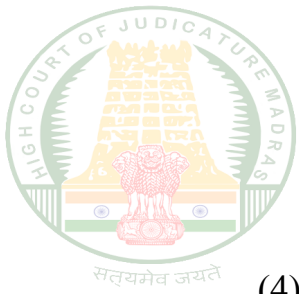
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(2) It is also contended by the workman that without holding an enquiry and without giving him an opportunity to explain his case, just based on the report of the Investigator of the Corporation, his services were terminated. According to the workman, the report of the Investigator was an one-sided one. The Investigator has neither considered the statement of the passengers who travelled in the bus at the time of accident nor the statements made by the public.

(3) The counsel for the workman would submit that the respondent-Management has taken a novel stand to justify his arbitrary termination by terming the workman as " அத்துக்கூலி ". The workman would contend that he was recruited through Employment Exchange, and on his selection for the post of Driver, he was given training in a Government Institution and upon collecting security deposit from him, he was appointed as DCL driver on daily wages by the Management. He also added that, three others had been appointed on the same day as him, who had been made permanent employees of the Corporation. They had also entered into the services of the respondent-Corporation in the same manner as the petitioner had. Therefore, the petitioner-workman also had the vested interest of being



regularised in services.

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(4) The petitioner workman would also plead that he had been acquitted of a criminal case which was filed against him in respect of the alleged accident, by the orders of the learned VI Metropolitan Magistrate, Chennai, dated 26.07.2005 in C.C.No.9437/2002. Thereafter, the petitioner had once again approached the respondent to take him back into services, but his request was not considered.

(5) The workman had also raised a dispute before the Conciliation Officer to arrive at a settlement. But the conciliation proceedings ended in a failure and the Conciliation Officer also has filed his failure report on 20.11.2003. Based on the failure report of the Conciliation Officer, the petitioner-workman had raised an industrial dispute in I.D.No.414 of 2007 before the Labour Court, Chennai.

4. The Management had filed its counter to the said I.D., *inter alia* denying the contentions of the petitioner-workman and would submit that the petitioner-workman was a temporary driver and no duty number was allotted to him. On 06.04.2002, the petitioner-workman had driven the bus in a negligent manner and had caused an accident, which resulted in a death



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of an old lady and two individuals were injured. Therefore, a sum of Rs.3,00,000/- was claimed from them as compensation. The petitioner-workman was neither a permanent employee nor a daily wager, and therefore, the Standing Orders or 12(3) settlement would not apply to him. It is in these circumstances, the workman was dismissed from service. Therefore, the petitioner-workman cannot claim reinstatement into service.

5. The Labour Court has raised the following points for consideration :

a) Whether the petitioner is entitled to get the relief of reinstatement, backwages, continuity of service with other attendant benefits?

2) To what other reliefs?

6. During trial, the workman had examined himself as W.W.1 and marked exhibits Ext.W1 to Ext.W16, and on the side of the Management, one S.Elumalai was examined as M.W.1, through whom Ext.M.W.1, the basic reports dated 06.04.2002 was filed.

7. The learned Judge on considering the evidence on record held that the petitioner had completed 240 days of continuous service from the date of



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his appointment on 08.01.2001. Therefore, he was entitled to be regularised in service and consequently the petitioner was a workman within the meaning of Section 2(s) of the Industrial Dispute Act. The learned Judge has also taken into account the fact that the petitioner-workman had been called for an interview by the respondent-Corporation, which is evidenced by Ext.W1, the letter dated 22.03.2000 sent by the Management to the petitioner-workman. Further, from the list of candidates forwarded by the Employment Exchange, the respondent-Management had selected the petitioner for the post of driver and this was intimated to the petitioner through Ext.W2, letter dated 16.9.2000, wherein he was also directed to undergo training for the post of driver. On successful completion of his training period, under Ext.W5 dated 03.01.2001, the petitioner-workman was issued with an appointment order and subsequent to which, he joined the services of the respondent-Corporation on 08.01.2000. This Ext.W5 would also indicate the names of three other persons who were appointed on the very same day along with the petitioner herein. The learned Judge has also observed that the petitioner-workman had paid the training fees on 26.09.2000 and caution deposit on 30.12.2000, as evidenced by Ext.W3 and Ext.W4 respectively. On a conjoint consideration of these exhibits, the



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Labour Court has come to the conclusion that the petitioner had been inducted into the services of the respondent-Corporation by following the procedures of recruitment. Further no documents have been filed by the respondent-Management before the learned Judge to prove that the petitioner-workman was an "அத்துக்கூலி" as alleged by the Management. Further, M.W1. has clearly stated that the petitioner-workman was removed from the role of driver. A removal in an organisation or an establishment, would take place only if the person so removed, is an employee under the said organisation. Therefore, the Labour Court had held that the petitioner was a regular employee and since his services were terminated without following the due process, the Court had held his termination to be bad.

8. Further the petitioner-workman had sought for certain documents from the respondent-Management, through his notice dated 09.05.2009. Since the said documents were not produced by the Management, the Court had drawn adverse inference against the Management. The Labour Court had also picked holes in Ext.M1, the report of a private investigator and consequently allowed the I.D. petition and directed the Management to reinstate the workman with backwages and continuity of services.



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10. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

11. Once again the argument that was sought to be put across by the Management is that the workman, the respondent herein, is not a regular employee under them and hence, he is not entitled to reinstatement. The petitioner-Management would submit that 12(3) settlement cannot be relied upon as the respondent-workman had not been regularised. Further the argument advanced by the Management was that the respondent-workman have not produced any documents viz., the alleged 12(3) settlement, his salary certificate etc., The learned counsel for the respondent-workman reiterated the argument that certain documents sought under Order 11 Rule 16 CPC were not produced by the Management.

12. During the pendency of this writ petition, the respondent-workman has taken out an application seeking a direction to the petitioner-Management to pay full salary to him in terms of 17(B) of the Industrial Disputes Act. No counter has been filed by the petitioner-Management in



the said petition.

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13. The learned counsel appearing on behalf of the workman had produced the judgment of a Division Bench of this Court in ***V.Krishna Ramanujam Vs. Pandian Roadways Corporation Ltd., and another*** reported in ***2001-Writ L.R.847***, wherein it has been held that the Section 17-B application has to be disposed of, before the disposal of the writ petition and that the 17-B petition should not be tagged along with the main petition, since the object of Section 17-B gets defeated. A similar view has been taken by the High Court of Calcutta in ***Sandhya Baul Vs Director of Panchayat*** reported in ***[2006-1-LLJ-110]***, that the 17-B petition have to be disposed of prior to the disposal of the writ petition and at the earliest. In the judgment of the Hon'ble Supreme Court in ***Dena Ban Vs. Kiritikumar Patel*** reported in ***1998 AIR SCW 98***, the learned Division Bench has observed that while exercising powers under Article 227 and 136 of the Constitution, an order cannot be passed denying the workman the benefit granted under Section 17-B of the Industrial Disputes Act. The Hon'ble Supreme Court has further held that under Section 17-B, the workman is entitled to the 'full wages last drawn' and not the "full wages which he would



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have drawn", since the words were used to mean the wages which the workman had drawn when he was in service. The object underlying in the provision is to relieve a certain extent of hardship caused to the workman due to the delay in implementation of the award and at the same time, it should not result in causing great loss to the employer, and in the event of the employer succeeding in his case, he may not be in a position to recover the amounts from the workman.

14. From a perusal of the records and the order passed by the Labour Court, it is clear that the workman, the respondent-herein had put in 240 days of continued service and similarly placed employees who had been appointed on the very same day, had been confirmed with permanent status, which the petitioner is also entitled to. Therefore, the termination can be only by following the procedures contemplated under the Act. In the instant case, the procedures as contemplated for termination of an employee has admittedly been violated. Therefore, the reinstatement cannot be found fault with. Therefore, the award of the III Additional Labour Court, Chennai in I.D.No.414 of 2007 dated 16.05.2013, cannot be set aside and accordingly, the writ petition is dismissed. No costs. The connected miscellaneous



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petition in WMP.No.4794 of 2021 stands closed.

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15. Since the respondent-workman is entitled to, as a matter of right to the wages during the pendency of the writ petition as per Section 17-B of the Act, WMP.No.29440 of 2024 is allowed and a direction is issued to the petitioner-Management to pay him the wages as per Section 17-B of the Act, as prayed for.

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Index : Yes / No

Neutral Citation : Yes / No
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