

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE R. KALAIMATHI

W.A. No. 1536 of 2022

&

C.M.P. No. 10163 of 2022

The Management,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
rep. by its General Manager,
Kumbakonam Region,
Kumbakonam.

..Appellant

Vs.

1. The Presiding Officer,
Labour Court, Cuddalore.

2. T. Ganesan

..Respondents

Prayer: Writ Appeal as against the order dated 04.01.2022 passed in
W.P. No. 38356 of 2015.

For Appellant :: Mr.M. Aswin

For 1st respondent :: Labour Court

For 2nd respondent:: Mr.Ajoy Khose

J U D G M E N T

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

The present writ appeal has been filed by the State Transport Corporation, Kumbakonam, questioning the order dated 04.01.2022 passed by the learned Single Judge in W.P. No. 38356 of 2015 by which the award dated 19.08.2014 passed by the Labour Court in I.D. No. 113 of 2004 has been confirmed.

2. The undisputed facts are that the 2nd respondent/employee, who joined the service of the appellant Corporation as a Clerk was dismissed from service on 12.04.2002. An industrial dispute between the Union and the appellant Management was pending and without seeking approval of their action by filing a petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 ("I.D. Act" in short), which is a mandatory requirement, the employer/Management allowed the dismissal order to stand. The

employee raised an industrial dispute before the Labour Court, Cuddalore and the Labour Court, after considering the rival contentions, set aside the order of dismissal and directed the Management to reinstate the employee in service with continuity of service and backwages. The writ petition filed by the Management challenging the said award was also dismissed for non-compliance of mandatory requirement as contemplated under Section 33(2)(b) of I.D.Act, 1947 confirming the award passed by the Labour Court.

3. Heard both sides.
4. From paragraph No.8 of the award, it is seen that prior to the date of dismissal of the employee, i.e, 12.04.2002, an industrial dispute between the workers of the Tamil Nadu State Transport Corporation and the Management was pending before the Commissioner of Labour Welfare and the relevant portion reads thus:

"8. மனுதாரர் பணி நீக்கம் செய்யப்பட்ட தேதி 12.04.2002 ஆகும். தொ.சா.ஆ.17ல் தொழிலாளர் நலத்துறை ஆணையர் முன்பாக அரசு போக்குவரத்து கழக தொழிலாளர்கள் ஏப்ரல் 2002 ல் வேலை நிறுத்தத்தில் ஈடுபடப்போவதாக தெரிவித்ததால், 30.03.2002 அன்று சென்னையில் சமரச பேச்சு வார்த்தை நடைபெற்றதாக

குறிப்பிட்டிருக்கிறார். அதைத் தொடர்ந்து 14.05.2002 அன்றும் பேச்சு வார்த்தை நடக்க இருப்பதாக குறிப்பிட்டிருக்கிறார். தொ.சா.ஆ.18ல் நிர்வாகம் வேறு ஒரு தொழிலாளியை பணி நீக்கம் செய்வதற்காக ஆணையரிடம் அனுமதி கேட்டுள்ளது. நி.சா.1 தன்னுடைய குறக்கு விசாரணையில் கடந்த 5 அல்லது 6 ஆண்டுகளாக ஏற்படும் பணி நீக்கங்களுக்கு தொழிலாளர் ஆணையரிடம் ஒப்புதல் பெற்றுவருவதாகவும், அவர் முன்னிலையில் ஒரு தாவா நிலுவையில் இருப்பதால் தான் அப்படி அனுப்பி வருவதாகவும், ஆணையரிடம் அந்த தொழிற் தகராறு எந்த தேதியில் தாக்கல் செய்யப்பட்டது என்று ஞாபகம் இல்லை என்றும், அது குறித்த பதிவேடுகள் தங்களிடம் உள்ளதாகவும் குறிப்பிட்டிருக்கிறார். மேலும் அவர் 2005க்கு முன்பும் தொழிற் தகராறு ஆணையர் முன்னிலையில் இருந்து வருவதாகவும், அந்த சமயத்தில் பணி நீக்கம் செய்யப்பட்ட தொழிலாளிகளுக்கான உத்தரவுகளையும் ஒப்புதலுக்காக அனுப்பி வைத்தோம் என்றும் குறிப்பிட்டிருக்கிறார். அந்த தொழிற் தகராறு சம்மந்தப்பட்ட ஆவணங்கள் தங்களிடம் உள்ளதாகவும், அவர் குறிப்பிட்டிருக்கிறார். அந்த தொழிற் தகராறு மனுதாரரின் பணி சம்மந்தப்பட்டதல்ல என்றால் நிர்வாகம் அந்த தொழிற் தகராறு சம்மந்தப்பட்ட கோப்புகளை இந்நீதிமன்றத்தில் தாக்கல் செய்திருக்கலாம். அவ்வாறு தாக்கல் செய்யாததிலிருந்தே அந்த தொழிற் தகராறு மனுதாரர் போன்ற தொழிலாளர்களின் பணி சம்மந்தப்பட்டது என்று தான் முடிவு செய்யவேண்டியிருக்கிறது. எதிர்மனுதாரர் கைவசம் உள்ள ஆவணங்களை தாக்கல் செய்யவில்லை

என்பதால், ஏதிர்மறை அனுமானம் செய்ய வேண்டியிருக்கிறது. மேலும் மனுதாரர் தாக்கல் செய்த ஆவணங்களின் உண்மை தன்மையை நி.சா.1 தன்னுடைய சாட்சியத்தில் குறிப்பிட்டு மறுக்கவில்லை. 30.03.2002 அன்று பேச்சு வார்த்தை நடந்தாக ஆணையர் குறிப்பிட்டிருப்பதை ஏதிர்மனுதாரர் தரப்பு சாட்சி மறுக்கவில்லை. அந்த தொழிற் தகராறு மனுதாரர் போன்ற தொழிலாளர்களின் பணி சம்மந்தப்பட்டது அல்ல என்றும், தன்னுடைய சாட்சியத்தில் அவர் சொல்லவில்லை. அந்த ஆவணங்கள் குறித்து எந்த கருத்தும் அவர் தெரிவிக்கவில்லை. அந்த ஆவணங்களை மறுக்கவும் இல்லை. எனவே மனுதாரர் பணி நீக்கம் செய்யப்பட்ட தேதிக்கு முன்பே மனுதாரர் போன்ற தொழிலாளர்கள் சம்மந்தப்பட்ட தொழிற் தகராறு ஒன்று ஆணையர் முன்பாக நிலுவையில் இருந்தது என்பதை மனுதாரர் நிரூபித்துவிட்டார் என்று தான் முடிவு செய்யவேண்டியிருக்கிறது..."

The above observation made by the Labour Court is also borne out by the proceedings of the Commissioner of Labour, Chennai dated 07.05.2002, which reads as follows:

"E1/18591/2002 நாள் 7.5.2002

ஐயா,

பொருள் : தொழிற் தகராறு சட்டம் 1947 –
நிர்வாகம் – அரசு போக்குவரத்துக் கழக
ஊழியர்கள் ஏப்ரல் 2002ல் வேலைநிறுத்தம்

என்று அறிவிப்பு தாக்கல் செய்தது –
பேச்சுவார்த்தைகள்,

பார்வை : என் முன்னர் 30.3.2002 அன்று
நடைபெற்ற பேச்சுவார்த்தைகள்.

தமிழ்நாடு அரசு போக்குவரத்துக் கழகங்களின்
தொழிலாளர்கள் ஏப்ரல் 2002ல்
வேலைநிறுத்தத்தில் ஈடுபடப் போவதாக
அறிவிப்புகள் தாக்கல் செய்ததைத் தொடர்ந்து
30.3.2002 அன்று சென்னையில் என் முன்னர்
சமரசப் பேச்சுவார்த்தைகள் நடைபெற்றன."

5. It is also to be noted that there is no need for an employee to raise an industrial dispute questioning the dismissal order when an application under Section 33(2)(b) of I.D.Act, 1947 is rejected or withdrawn by the employer and the employee is deemed to be in service in the light of the judgment of the Hon'ble Apex Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd Vs. Ram Gopal Sharma and Others* ((2002) 2 SCC 244), particularly, paragraph No. 14, which is extracted below,.

"14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of

dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained the proviso were complied with or not etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an

employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment inspite of the statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33-A would be meaningless and futile. The said section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

Likewise, if no approval application is filed, the employer cannot be

given a premium to allow the order of dismissal to stand when he has acted contrary to the provisions of I.D. Act. In the present case, the employee, instead of filing an application claiming wages under Section 33(C)(2) of I.D. Act and also for recovery of the undisputed amount by filing an application under Section 33(C)(1) of I.D. Act, 1947 in the light of the judgment of the Hon'ble Apex Court in *M/s. Fabril Gasosa V. Labour Commissioner & Others* reported in *1997 3 SCC 150*, raised an industrial dispute which was taken up by the Labour Court in I.D. No. 113 of 2004 and an award was passed on 19.08.2014 directing the employee to be reinstated in service with backwages and continuity of service. The learned Single Judge has rightly confirmed the award of the Labour Court as pre-approval, which is a mandatory requirement has not been complied with by the Management.

6. According to the learned counsel for the workman, Strike Notice under Form O is contemplated under Rule 59(1) of the Tamil Nadu Industrial Disputes Act, 1958 and that, a Strike Notice dated 18.03.2002 was issued as could be seen in the typed set of papers filed by the 2nd Respondent. This document was objected by the learned counsel for the Management on the ground that it was not signed and it was not marked

before the Labour Court.

7. We are entirely in agreement with the contention of the learned counsel for the Management that an unsigned document cannot be taken into account. However, from the Award, it is very clear that based on the Strike Notice, the intention of the workmen to go on strike from April 2002, was referred to by the Conciliation Officer in the proceedings dated 07.05.2002, that the conciliation took place on 30.03.2002. Once the Strike Notice under Section 22 of the Industrial Disputes Act, 1947 is received by the Conciliation Officer in terms of Section 20 of the Industrial Disputes Act, conciliation is deemed to have commenced.

8. For the sake of convenience, Section 2(n), First Schedule of Section 2(n), Section 20 and 22 of the Industrial Disputes Act, 1947 and Rule 22 and Rule 23 of the Tamil Nadu Industrial Disputes Rules, 1958, are extracted below:

**Section 2(n), First Schedule of Section 2(n),
Section 20 and 22 of the Industrial Disputes Act, 1947:**

2(n) "public utility service" means-

(i) any railway service for any transport service for the carriage of passengers or goods by air]; [(ia) any service in, or in connection with the working of, any major port or dock.]

(ii) any section of an industrial establishment, on the

working of which the safety of the establishment, or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation;

(vi) any industry specified in the '[First Schedule]' which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification:

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension;

First Schedule of Section 2(n) :

Industries which may be declared to be Public Utility Services under sub-clause (vi) of Clause (n) of Section 2:

1. Transport (other than railways) for the carriage of passengers or goods (by land or water)

20. Commencement and conclusion of proceedings:

A conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike or lock-out under Section 22 is received by the Conciliation Officer or on the date of the order referring the dispute to a Board, as the case may be.

(2) A conciliation proceeding shall be deemed to have concluded -

(a) where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute;

(b) where no settlement is arrived at, when the report of the Conciliation Officer is received by the

appropriate Government or when the report of the Board is published under Section 17, as the case may be; or

(c) when a reference is made to a Court, [Labour Court, Tribunal or National Tribunal] under Section 10 during the pendency of conciliation proceedings.

(3) Proceedings [before an arbitrator under section 10-A or before a Labour Court, Tribunal or National Tribunal] shall be deemed to have commenced on the date of the [reference of the dispute for arbitration or adjudication, as the case may be] and such proceedings shall be deemed to have concluded [on the date on which the award becomes enforceable under section 17-A].

22. Prohibition of strikes and lock-outs :

(1) No person employed in a public utility service shall go on strike in breach of contract-

(a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid; or

(d) during the pendency of any conciliation proceedings before a Conciliation Officer for a period of seven days after the conclusion of such proceedings.

(2) No employer carrying on any public utility service shall lock-out any of his workmen (a) without giving them notice of lock-out as hereinafter provided, within six weeks

before locking out; or

(b) within fourteen days of giving such notice; or

(c) before the expiry of the date of lock-out specified in any such notice as aforesaid;

or

(d) during the pendency of any conciliation proceedings before a conciliation officer

and seven days after the conclusion of such proceedings.

(3) The notice of lock-out or strike under this section shall not be necessary where there is already in existence a strike or, as the case may be, lock-out in the public utility service, but the employer shall send intimation of such lock-

out or strike on the day on which it is declared, to such authority as may be specified by the appropriate Government either generally or for a particular area or for a particular class of public utility services.

(4) The notice of strike referred to in sub-section (1) shall be given by such number of persons to such person or persons and in such manner as may be prescribed.

(5) The notice of lock-out referred to in sub-section (2) shall be given in such manner as may be prescribed.

(6) If on any day an employer receives from any person employed by him any such notices as are referred to in sub-section (1) or gives to any person employed by him any such notices as are referred to in sub-section (2), he shall within five days thereof report to the appropriate Government or to such authority as that Government may prescribe, the number of such notices received or given on that day.

Rule 22 and Rule 23 of the Tamil Nadu Industrial Disputes Rules, 1958 :

22. Conciliation proceedings in public utility service: The Conciliation Officer, on receipt of notice of strike or lock-out given under Rule 59 shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question.

23. Conciliation proceedings in non-public utility service:

(1) Where the Conciliation Officer receives any information about an existing or apprehended industrial dispute which does not relate to a public utility service and he considers it necessary to intervene in the dispute, he shall give formal intimation to the parties concerned declaring his intention to commence conciliation proceedings with effect from such date as may be specified therein.

(2) The Conciliation Officer may hold a meeting of the representatives of both the parties jointly or of each

party separately.

- (3) The Conciliation Officer shall conduct the proceedings expeditiously and in such manner as he may deem fit.

9. As the Transport Corporation is a public utility service in terms of Section 2(n) of the Act and the relevant portion of the First Schedule refers to the Transport Corporation carrying passengers, it is clear that the employer is bound to comply with the mandatory provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947, as the employee was dismissed from service on 12.04.2022 during the pendency of the conciliation proceedings. The Conciliation Officer's communication dated 07.05.2002 which is referred to supra would make it clear that conciliation was pending on the date of dismissal of the employee.

10. We find that there is no infirmity in the order of the learned Single Judge confirming the award of the Labour Court. ***Hence, the writ appeal stands dismissed.*** The award will be in force till such time it is replaced by another award or settlement, more so, in the light of the judgment of the Hon'ble Apex Court in ***Life Insurance Corporation of India V. D.J. Bahadur*** reported in ***(1981) 1 LLJ Page.1.*** We make it very clear that the award of the Labour Court as confirmed by the learned Single Judge has to be implemented within a period of four months from the date

of receipt of a copy of this order as the employee has already retired. In the event of Management's failure to implement the award within the time limit stipulated by this Court, it is open to the employee to make a complaint under Section 29 of I.D. Act to prosecute the officials under Section 32 of I.D. Act, 1947 and the Government is expected to sanction prosecution. No costs. Connected C.M.P. is closed.

nv

(S.V.N.J.) (R.K.M.J.)
06.04.2023

To
The Management,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
rep. by its General Manager,
Kumbakonam Region,
Kumbakonam.

S. VAIDYANATHAN,J.

AND

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