IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.016

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.37839 of 2016

and

W.M.P.No.32420 of 2016

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

Vs.

1. D.Ezhilarasan

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

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records pertaining to the order passed in C.P.No.1578 of 2010, dated 18.03.2016 on the file of the second respondent herein and quash the same.

For petitioner : Mr.M.Chidambaram

ORDER

The petitioner-Management has filed this Writ Petition praying for issuance of a Writ of Certiorari to call for the records pertaining to the order passed in C.P.No.1578 of 2010, dated 18.03.2016 on the file of the second respondent herein and quash the same.

2. It is the case of the petitioner that the first respondent-workman was appointed on 31.12.1996 as Conductor. While he was in duty on 09.11.2006 as Conductor, he was irregular in issuing the tickets and he has misappropriated the revenue of the petitioner-Transport Corporation and failed to follow the procedures which are governed in the Certified Standing Order. A charge-memo was issued to the first respondent. Enquiry was held and enquiry report was submitted stating that all the charges framed against him are proved. The first respondent was terminated from service on 17.06.2008. It is further stated that common issue of employees, is pending before the Special Deputy Commissioner of Labour, Teynampet, Chennai, and due to administrative reasons, the Approval Petition was not filed. The first respondent filed C.P.No.1578 of 2010 before the second respondent-Labour Court, under Section 33-C(2) of the

Industrial Disputes Act, and the said C.P. was partly allowed by the impugned order, dated 18.03.2016, directing the writ petitioner-Management to pay Rs.3,28,690/- to the first respondent herein, within three months from the date of receipt of a copy of the order, on the ground that the mandatory provisions of Section 33-C(2) of the said Act has not been complied with by the Management. Challenging the same, the Management (Transport Corporation) has filed this Writ Petition.

3. Learned counsel for the petitioner-Management contended that when once the first respondent-workman has been terminated from service, he is claiming benefits of not only the back-wages, but also the settlement entered into under Section 12(3) of the Act after the date of termination, as if he is deemed to be in service. Learned counsel for the petitioner-Management further contended that the first respondent-workman has neither challenged the termination order, nor filed a petition under Section 33-A of the said Act challenging the action of the Management.

4. The above arguments of the learned counsel for the petitioner-Management is nothing but the arguments advanced before the Supreme Court in the case of Punjab Beverages (P) Ltd. Vs. Suresh Chand, reported in 1978 (2) SCC 144, which has been watered down by the Supreme Court (Constitution Bench) in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma, reported in 2002 (2) SCC 244, wherein, the Apex Court held as follows:

> "13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say

that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman.

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 in 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 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 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 33A and that till such time he should suffer misery of unemployment in spite 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.

15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33-A, cannot be accepted. In our view, not making an application under Section 33(2)(b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2)(b). An employer who does not make an application under Section 33(2)(b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceedings by making a complaint under Section 33-A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an

employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment."

5. In the above decision (Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. case), the Supreme Court has categorically held that in case the employer failed to comply with the mandatory provisions of the Industrial Disputes Act, more particularly, either seeking approval of their action or permission, depending upon facts and circumstances of the case, the employee need not knock at the doors of the Court to get illegal order set aside and that the employee is deemed to be in service.

6. Following the above ratio laid down by the Supreme Court, I am of the view that there are no merits in this Writ Petition filed by the petitioner-Management and the impugned order of the second respondent-Labour Court in C.P.No.1578 of 2010, dated 18.03.2016, does not suffer from any infirmity.

7. The other issues canvassed by the learned counsel for the petitioner, are on facts, which cannot be interfered with by this Court. Once the petitioner is deemed to be in service, not only the back-wages, but also the settlement benefits under Section 12(3) of the said Act, entered into between the Union and the Management, will have to be extended. The second respondent-Labour Court has passed the order on 18.03.2016, directing the Management to pay Rs.3,28,690/- within three months from the date of receipt of a copy of the said order. If the said amount has not yet been paid to the first respondent-workman, the petitioner-Management is directed to pay the same to him, within six weeks from the date of receipt of a copy of this order, failing which, the petitioner-Management will have to pay interest at the rate of 12% per annum from the date of the impugned order of the Labour Court, i.e. from 18.03.2016, till the date on which the amount will be actually disbursed to the first respondent-workman. Even thereafter, if the amount is not paid within the time stipulated, the said amount of interest together with 50% of the amount, will have to be recovered from the officer(s) concerned, who is/are responsible to comply with the order and who has not complied with the order within the time stipulated.

8. In the above context, it is worthwhile to refer a decision of the Supreme Court reported in 1993 (3) SCC 214 = AIR 1994 SC 23 (Central Co-operative Consumers' Store Ltd. Vs. Labour Court, H.P. at Shimla and another), wherein, the Apex Court held as follows:

"5.Public money has been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before the one or the other authority. They have literally persecuted her. Despite unequal strength the opposite party has managed to survive. We are informed that the opposite party has been reinstated. This was put forward as bonafide conduct of petitioner to persuade us to modify the order in respect of back wages. Facts speak otherwise. Working life of opposite party has been lost in this tortuous and painful litigation of more than twenty years. For such thoughtless acts of its officers the petitioner-society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. But considering the agony and suffering of the opposite party that amount cannot be a proper recompense. We, therefore, dismiss this petition as devoid of any merit and direct the petitioner to comply with the directions of the High Court within the time granted by it. We however leave it open to the society to replenish itself and recover the amount of back wages paid by it to the opposite party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite patty. We may clarify that the permission given, shall have nothing to do with the direction to pay the respondent her back wages. Step if any to recover the amount shall be taken only after payment is made to the opposite party as directed by the High Court.... "

9. From the above decision of the Supreme Court, it is clear that the amount can be recovered from the officer(s) concerned, who is responsible for the litigation. Hence, the Managing Director of the appellant/Transport Corporation is directed to identify the official(s) who is/are responsible to comply with the impugned order, dated 18.03.2016 and inform the officer(s) the consequences and send a copy of the communication of the said information to the Registrar General of this Court. If the Managing Director of the appellant/Transport Corporation himself is responsible to comply with the impugned order, dated 18.03.2016, then he should do so, failing which, the ratio mentioned supra, will be applicable to him also.

10. With the above observations and directions, the Writ Petition is dismissed. No costs. W.M.P. is closed.

cs

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1 The Registrar General, High court, Madras.

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

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

4. The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam,
Anna Salai, Chennai-600 002.

+1cc to M/S M.Chidambaram, Advocate, Sr.61824

W.P.No.37839 of 2016

NM(CO)
RVR 09/01/2016