



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : **07.11.2016**

WEB COPY

C O R A M

THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) No.20923 of 2016
and
W.M.P (MD) No.14957 of 2016

G.Gurusaravanan

.. Petitioner

Vs.

The General Manager

The Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region,
Madurai.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to reinstate the Petitioner with continuity of service, back wages and all other attendant benefits as per the order, dated 06.05.2016 of the Special Deputy Commissioner of Labour, Chennai passed U/S 33(2) (b) of I.D. Act in Approval Application A.P.No.110/14.

For petitioner

... Mr.G.M.Xavier

For Respondent

... Mr.A.Jeyaram

O R D E R

This is a writ of mandamus directing the respondent to reinstate the petitioner with continuity of service, back wages and all other attendant benefits, as per the order dated 06.05.2016 of the Special Deputy Commissioner of Labour, Chennai passed U/S 33(2) (b) of I.D. Act in Approval Application A.P.No.110/14.

2.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3.The facts leading to the filing of the writ petition:

The petitioner was employed as Driver under the respondent Corporation with effect from 29.08.2008. When the respondent Corporation initiated disciplinary proceedings against the petitioner alleging some misconduct, an enquiry was conducted and finally, he was

dismissed from service, by order, dated 28.04.2014.

3.1.The Transport Corporation sought for approval of the dismissal and the same was taken on file in Approval Application No.110 of 2014. The Special Deputy Commissioner of Labour, after hearing both sides, rejected the approval application. Thereafter, the petitioner has sent a letter dated 22.07.2016 requesting the respondent to reinstate him with continuity of service. As there was no response, this writ petition has been filed.

4.The learned counsel for the respondent would submit that as against the order passed by the Special Deputy Commissioner of Labour, a writ petition has been filed and it is in the SR stage.

5.The order of the Special Deputy Commissioner of Labour is dated 06.05.2016. Still no writ petition has been admitted so far.

6.The learned counsel for the petitioner would rely upon the Judgment of the Hon'ble Supreme Court in T.N. STATE TRANSPORT CORPORATION v. NEETHIVILANGAN, KUMBAKONAM reported in 2001 (9) SCC 99, under which, the legal position has been clarified stating that once an approval petition is refused, the order of dismissal will be invalid and inoperative in law. In other words, the order of dismissal has to be treated as non est and the workman will be treated as never to have been dismissed.

7.Therefore, in the reported decision, it is made clear that the petitioner is deemed to continue in service. Under such circumstances, if no employment is provided by the respondent, it is at his will and pleasure and that the petitioner shall be entitled to all benefits including the continuity of service, pay protection and all other attendant benefits right from the date of dismissal from service.

8.With these observations, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

The General Manager
The Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region,
Madurai.

+ 1cc to M/S G.M.Xavier, Advocate, SR-66819

AAM/3c/2p/10.01.2017

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