

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.1164 of 2017
and
C.M.P.No.16206 of 2017

Tamilnadu State Transport Corporation (Salem) Ltd.,
Rep. by its Managing Director,
12, Ramakrishna Road,
Salem - 636 007. Appellant

versus

S.Krishnan Respondent

Writ Appeals filed against the order dated 08.06.2015
made in W.P.No.10246 of 2015.

W.P.No.10246 of 2015 : Petition for a Writ of Mandamus,
praying to direct the respondent to calculate and pay the
entire monetary dues to the petitioner as if the petitioner
was in continuous service from 20.1.1996 till the date of
superannuation on 30.12.2008 and the arrears of pension from
1.1.2009 till date of payment with interest within a time
frame.

For Appellant : Mr.P.Paramasiva Doss

For Respondent : Mr.J.Saravanel

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

With the consent of the learned counsel appearing for
both parties, writ appeal is heard.

2. While the respondent working as a Conductor in
Tamilnadu State Transport Corporation (Salem) Limited, Salem,
he was dismissed from service on 20.01.1996 for unauthorised
absence, from 25.11.1994 to 25.10.1995. An industrial dispute,
relating to payment of bonus for the year 1981-82, was pending
in I.D.No.62 of 1982, before the Industrial Tribunal, Chennai.
Managing Director, Tamilnadu State Transport Corporation
(Salem) Limited, Salem, appellant herein filed an Approval

Petition in AP.No.8 of 1996 under Section 33(2)(b) of the Industrial Disputes Act, 1947, seeking approval, for the dismissal of the respondent.

3. Industrial Tribunal, Chennai, dismissed the Approval Petition on 08.09.2003, for default. Appellant Corporation filed an application viz., M.A.No.3 of 2004 to set aside the order dated 08.09.2003, dismissing the Approval Application for default. On 11.05.2004, Industrial Tribunal, Chennai, passed a conditional order. The same was not complied with, by the Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein. M.A.No.3 of 2004, was dismissed.

4. Being aggrieved by the same, Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, filed W.P.No.33034 of 2007. Pending disposal of the said proceedings, on 31.12.2008, respondent reached the age of superannuation. Taking note of the above, the Writ Court dismissed the writ petition on 17.10.2012, upholding the dismissal of the Approval Petition No.8 of 1996. While doing so, writ Court vide order dated 17.10.2012 in W.P.No.33034 of 2007, directed the Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein, to disburse the retirement benefits to the respondent, as expeditiously as possible and in any case on or before 31st January 2013.

5. Order made in W.P.No.33034 of 2007 dated 17.10.2012, has been challenged by the Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein in W.A.No.1462 of 2012. During the pendency of the said writ appeal, respondent herein filed Contempt Petition No.970 of 2013 in April 2013.

6. Adverting to the rival contentions, as to whether dismissal of the Approval Petition, and confirmed by the writ Court, was correct or not, a Hon'ble Division Bench of this Court in W.A.No.1462 of 2012, dated 16.07.2013, held that the writ Court in W.P.No.33034 of 2007 dated 17.10.2012, has rightly dismissed the writ petition and that no ground has been made out by the appellant to interfere with the said order. Perusal of the order made in W.A.No.1462 of 2012 dated 16.07.2013 shows that after the pronouncement of the order made in W.A.No.1462 of 2012, submission has been made by the learned counsel for the appellant therein, that Cont.P.No.970 of 2013, was pending before the writ Court and that he has prayed for a reasonable time to pay the amount due and payable, to the 2nd respondent therein/workman. Taking note of the said submission, the Hon'ble Division Bench has granted six weeks time to the appellant from the date of receipt of a copy of the judgment made in W.A.No.1462 of 2012 dated 16.07.2013, to settle the terminal benefits, due and payable to the 2nd respondent therein/workman.

7. Material on record discloses that on 19.09.2013, a sum of Rs.1,58,190/- gratuity amount has been paid to the respondent vide Cheque No.50891 dated 30.08.2013, drawn on Canara Bank, Salem.

8. Subsequently, when Cont.P.No.970 of 2013, came up for hearing, taking note of the submission of the learned counsel for the workman/petitioner therein that compliance of the order in W.P.No.33034 of 2007 dated 17.10.2012 was not in full, writ Court granted liberty to the workman / respondent herein, to initiate proceedings in the manner known to law. Cont.P.No.970 of 2013, has been disposed of on 23.10.2013, which resulted in filing of the W.P.No.10246 of 2015, by the respondent for a mandamus, directing the Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein, to calculate and to pay the entire monetary dues, to the respondent, as if he was in continuous service from 20.01.1996, the date on which he was dismissed from service till 31.12.2008, the date on which, he attained the age of superannuation.

9. In W.P.No.10246 of 2014, respondent has also prayed for a direction to the Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein, to pay arrears of pension from 01.01.2009 till the date of payment, with interest, within a time frame to be fixed by this Court.

10. Supporting the prayer sought for, in W.P.No.10246 of 2015, petitioner has contended that the legal effect of dismissal of Approval petition is that the dismissal would be void and ineffective and that therefore, the respondent/petitioner in W.P.No.10246 of 2015, is entitled to back wages, continuity of service and other attendant benefits as if, he was in service till the date of attaining the age of superannuation. Supporting the prayer sought for, respondent has relied on a decision of the Hon'ble Supreme Court in Jaipur Zila Sanskari Bhoomi Vikas Bank Limited Vs. Shri Ram Gopal Sharma & Others, reported in 2002 (2) SCC 244 and M.D., Tamil Nadu State Transport Corporation Vs. Neethivilangan, Kumbakonam, reported in 2001 (3) CTC 372.

11. Though, the Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein, opposed the prayer sought for, on the grounds inter alia that in the earlier round of litigation, this Court had only directed disbursement of retiral benefits as expeditiously as possible and in any case on or before 31st January 2013 and that there was no direction to pay the arrears of back wages and other attendant benefits, claimed by the respondent, taking note of the Constitutional Bench decision of the Hon'ble Apex Court in Jaipur Zila's Case [cited supra] and Neethivilangan's case [cited supra], writ

Court, vide order made in W.P.No.10246 of 2015, dated 08.06.2015, allowed the prayer sought for, and directed the Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein, to pay wages for the period from 20.01.1996, the date on which, he was dismissed from service till 31.12.2008, the date on which he attained the age of superannuation.

12. Appellant herein has also been directed to grant pension, as per the Pension Rules, applicable to the employees of the Transport Corporation and settle arrears of pension. Writ Court has further directed that for the purpose of payment of pension, gratuity and other terminal benefits, period of service between 20.01.1996 and 31.12.2008, be taken into account. Writ Court has further directed that wages, pension, gratuity and other terminal benefits as stated supra, may be settled on or before 31.08.2015.

13. Assailing the correctness of the order made in W.P.No.10246 of 2013, dated 08.06.2015, instant writ Appeal has been filed seeking for reversal.

14. Reiterating the grounds urged before the writ Court, Mr.P.Paramasivadosh, learned counsel for the Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein, contended that earlier, when W.A.No.1462 of 2012 was disposed of on 16.07.2013, the direction issued was only to settle the retiral benefits and that in the absence of any positive direction to settle backwages and other attendant benefits, it is not open to the respondent to enforce a right, by invoking Article 226 of the Constitution of India.

15. Placing reliance on the decisions of the Hon'ble Supreme Court in State Bank of India Vs. Ram Chandra Dubey & Others, reported in 2001 (1) SCC 73, A.P.S.R.T.C & another Vs. S.Narsagoud, reported in 2003 (2) SCC 212 and J.K.Synthetics Limited Vs. K.P.Agrawal and Another, reported in 2007 (2) SCC 433, learned counsel for Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein further submitted that the Hon'ble Supreme Court has held that when an order of reinstatement simplicitor is made, and silent on the aspect of backwages and other attendant benefits, it cannot be inferred or presumed that backwages will follow. He therefore, submitted that writ Court has erred in issuing directions for payment of backwages and other attendant benefits from 20.01.1996, the date on which the respondent was dismissed from service till 31.12.2008, the date on which he attained the age of superannuation.

16. For the above reasons, Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein has sought for reversal of the order.

17. Per contra, Mr.J.Saravanel, learned counsel for the respondent submitted that the consequences of dismissal of the Approval Petition, is that respondent is deemed to have been in continuous service and entitled to all arrears of backwages, continuity of service and other attendant benefits. Reference was also made to the decisions relied on by the writ Court. He further submitted that pending disposal of W.A.No.1462 of 2012, respondent filed Cont.P.No.970 of 2013, praying to punish the appellant, for the willful and deliberate disobedience of the order made in W.P.No.33034 of 2007 dated 17.10.2012 and taking note of the pendency of the Contempt petition, a Hon'ble Division Bench of this Court, while confirming the order of dismissal of the Approval Petition, directed the appellant therein, to disburse the amount due and payable to the workman. When Contempt Petition No.970 of 2013, was disposed of on 23.10.2013, liberty was also given to the respondent to initiate proceedings in the manner known to law and thus, the subsequent writ petition W.P.No.10246 of 2015, has been filed for a mandamus, directing the Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein, to calculate and pay the entire monetary dues, due to the respondent, as if the respondent was in continuous service from 20.01.1996, the date on which he was dismissed from service till 31.12.2008, the date on which he attained the age of superannuation.

18. In the light of the decision in Jaipur Zila's case [cited supra], Mr.J.Saravanel, learned counsel for the respondent submitted that when the law is settled, it is not open to the Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein to take a technical stand. He prayed to sustain the order impugned.

19. Heard the learned counsel for the parties.

20. Dismissal of Approval Petition No.8 of 1996 by the Industrial Disputes Tribunal, Chennai on 08.09.2003, has attained finality in W.A.No.1462 of 2012 dated 16.07.2013. Pending disposal of W.A.1462 of 2012 respondent has filed Contempt Petition No.970 of 2013, praying to punish the appellant, for the willful and deliberate disobedience of the order made in W.P.No.33034 of 2007 dated 17.10.2012.

21. At the time of disposal of W.A.No.1462 of 2012, when the learned counsel for the appellant Transport Corporation submitted that the Contempt Petition was pending before the writ Court and prayed for a reasonable time to pay the amount due and payable to the respondent/workman, the amount due and payable, a Hon'ble Division Bench, while dismissing W.A.No.1462 of 2012 has granted six weeks time to the appellant to settle the terminal benefits, due and payable to the respondent/workman. Said direction made in W.A.No.1462 of 2012 on 16.07.2013, is now sought to be taken advantage by the appellant to contend that there is no direction by the Hon'ble

Division Bench to settle the arrears of backwages and other attendant benefits due and payable to the respondent consequent to the dismissal of the Approval Petition No.8 of 1996, by the Industrial Tribunal, Salem.

22. In Jaipur Zila Sanskari Bhoomi Vikas Bank Limited Vs. Shri Ram Gopal Sharma & Others, reported in 2002 (2) SCC 244, the question framed by the Hon'ble Apex Court was, "If the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, 1947, whether the order of dismissal becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal and whether failure to make an application under Section 33(2)(b) would not render the order of dismissal inoperative?"

23. Resolving the conflict in the views expressed, at paragraph Nos.6 to 11, 13 to 18, the Hon'ble Supreme Court discussed the law, threadbare and answered the issue in favour of workman, by holding that if the approval petition is dismissed, then the termination is void.

"6. Answer to the question on which conflicting decisions are rendered, as noticed above, depends on a fair reading and proper interpretation of Section 33(2)(b) of the Act. Prior to the amendment of 1956, provision contained in Section 33 corresponded to the present Section 33(1) only. The object behind enacting Section 33, as it stood before it was amended in 1956, was to allow continuance of industrial proceedings pending before any authority/court/tribunal prescribed by the Act in a peaceful atmosphere undisturbed by any other industrial dispute. In course of time, it was felt that unamended Section 33 was too stringent for it placed a total ban on the right of the employer to make any alteration in conditions of service or to make any order of discharge or dismissal even in cases where such alteration in conditions of service or passing of an order of dismissal or discharge, was not in any manner connected with the dispute pending before an industrial authority. It appears, therefore, that Section 33 was amended in 1956 permitting the employer to make changes in conditions of service or to discharge or dismiss an employee in relation to matters not connected with the pending industrial dispute. At the same time, it seems to have been felt that there was need to provide some safeguards for a workman who may be discharged or dismissed during the pendency of a dispute on account of some matter unconnected with the dispute. This position is clear by reading redrafted expanded Section 33 in 1956 containing five sub-sections. For the present purpose, we are concerned with the proviso to Section 33(2)(b). The material and relevant portion of Section 33 reads:-

"33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.- (1)

(2)

During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing order, in accordance with the terms of the contract, whether express or implied, between him and the workman -

(a)

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman; Provided that no such workman shall be discharged or dismissed, unless, he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

7. The proviso expressly and specifically states that no workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. It is clear from the proviso to Section 33(2)(b) that the employer may pass an order of dismissal or discharge and at the same time make an application for approval of the action taken by him. In the *Strawboard Mfg. Co. Vs. Govind* [1962 Supp (3) SCR 618] dealing with the contention that if the employer dismisses or discharges a workman and then applies for approval of the action taken and the tribunal refuses to approve the action, the workman would be left with no remedy as there is no provision for reinstatement in Section 33(2), it is held that

"if the tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer".

8. A Constitution Bench of this Court in the case of *P.H. Kalyani vs. M/s. Air France Calcutta* [1964(2) SCR 104] referring to *Strawboard* has observed thus:-

"4. The main point which was raised in this appeal is now concluded by the decision of this Court in the Straw Board Manufacturing Co. Limited, Saharanpur vs. Govind. This Court has held in that case that "the proviso to Section 33(2) (b) contemplates the three things mentioned therein, namely, (i) dismissal or discharge, (ii) payment of wages, and (iii) making of an application for approval, to be simultaneous and to be part of the same transaction so that the employer when he takes the action under Section 33(2) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time'.

It was further held that

"the employer's conduct should show that the three things contemplated under the proviso, are parts of the same transaction; and the question whether the application was made as part of the same transaction or at the same time when the action was taken would be a question of fact and will depend upon the circumstances of each case."

9. In the case of Tata Iron and Steel Co. Ltd., Vs. S.N.Modak [AIR 1966 SC 380] it is reiterated and stated thus:-

"It is now well-settled that the requirements of the proviso have to be satisfied by the employer on the basis that they form part of the same transaction; and stated generally, the employer must either pay or offer the salary for one month to the employee before passing an order of his discharge or dismissal, and must apply to the specified authority for approval of his action at the same time, or within such reasonably short time thereafter as to form part of the same transaction. It is also settled that if approval is granted, it takes effect from the date of the order passed by the employer for which approval was sought. If approval is not granted, the order of dismissal or discharge passed by the employer is wholly invalid or inoperative, and the employee can legitimately claim to continue to be in the employment of the employer notwithstanding the order passed by him dismissing or discharging him. In other words, approval by the prescribed authority makes the order of discharge or dismissal effective, in the absence of approval, such an order is invalid and inoperative in law."

10. In the same judgment, it is also stated that "order of dismissal or discharge being incomplete and inchoate until the approval is

obtained, cannot effectively terminate the relationship of the employer and employee and that if the approval is not accorded by the tribunal, the employer would be bound to treat the respondent as its employee and paying his full wages for the period even though the employer may subsequently proceed to terminate the services of the respondent .

11. Per contra, in Punjab Beverages (P) Ltd Vs. Suresh Chand [1978 (2) SCC 144], it is held that an order dismissing the workman contravening Section 33 (2)(b) shall not be void and inoperative and hence the workman was not entitled to maintain the application for determination and payment of wages under Section 33(C)(2); a workman can proceed under Section 33(C)(2) only after the tribunal has adjudicated on a complaint under Section 33A or on a reference under Section 10 that the order of discharge or dismissal was not justified and has set aside that order and reinstated the workman; rejecting a contention that the workman would be left without any remedy on the interpretation that contravention of Section 33 does not invalidate an order of discharge or dismissal, it is stated that if the employer contravenes Section 33, he would be liable to punishment under Section 31(1) and moreover the aggrieved workman can act under Section 10 or he can make a complaint to the tribunal under Section 33A; it was held that the withdrawal of the application made under Section 33(2)(b) stands on the same footing as if no application thereunder has been made if there was no decision on merit of the said application, it cannot be said that the approval has been refused by the Tribunal.

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 other 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 are 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 33A challenging the order granting approval on any of the grounds available to him. Section 33A 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 33A 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 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 33A 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 33A, 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 proceeding by making a complaint under Section 33A 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.

16. Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under Section 33A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under Section 33A. There is nothing in Sections 31, 33 and 33A to suggest otherwise even reading them together in the context. These Sections are intended to serve different purposes.

17. As already noticed above, the constitution Bench of this Court in P.H. Kalyani vs. M/s. Air France Calcutta [AIR 1963 SC 1756] has referred to Strawboard Manufacturing Co. vs. Gobind and approved the view taken in the said decision as regards the requirements of the proviso to Section 33(2) (b). Unfortunately in Punjab Beverages Pvt. Ltd. vs. Suresh Chand, the earlier two cases of Strawboard and Tata Iron & Steel Co. were not noticed touching the question. It is true that in S. Ganapathi &

others vs. Air India and another, there is no reference to Punjab Beverages. But the view taken in two earlier decisions of Strawboard and Tata Iron & Steel Co. is followed on the question and rightly so in our opinion.

18. In view of what is stated above, we respectfully agree with and endorse the view taken in the case of Strawboard and Tata Iron & Steel Co. and further state that the view expressed in Punjab Beverages on the question is not the correct view. The question raised in the beginning of this judgment is answered accordingly."

24. In M.D., Tamil Nadu State Transport Corporation Vs. Neethivilangan, Kumbakonam, reported in 2001 (3) CTC 372, after considering various decisions, at paragraph No.16, the Hon'ble Supreme Court held as follows:

"16. From the conspectus of the views taken in the decisions referred to above the position is manifest that while the employer has the discretion to initiate a departmental inquiry and pass an order of dismissal or discharge against the workman the order remains in an inchoate state till the employer obtains order of approval from the Tribunal. By passing the order of discharge or dismissal de facto relationship of employer and employee may be ended but not the de jure relationship for that could happen only when the Tribunal accords its approval. The relationship of employer and employee is not legally terminated till approval of discharge or dismissal is given by the Tribunal. In a case where the Tribunal refuses to accord approval to the action taken by the employer and rejects the petition filed under Section 33(2)(b) of the Act on merit the employer is bound to treat the employee as continuing in service and give him all the consequential benefits. If the employer refuses to grant the benefits to the employer (sic) (employee) the latter is entitled to have his right enforced by filing a petition under Article 226 of the Constitution. There is no rational basis for holding that even after the order of dismissal or discharge has been rendered invalid on the Tribunal's rejection of the prayer for approval the workman should suffer the consequences of such invalid order of dismissal or discharge till the matter is decided by the Tribunal again in an industrial dispute. Accepting this contention would render the bar contained in Section 33(1) irrelevant. In the present case as noted earlier the Tribunal on consideration of the matter held that the employer had failed to establish a prima facie case for dismissal/discharge of the workman, and therefore,

dismissed the application filed by the employer on merit. The inevitable consequence of this would be that the employer was duty bound to treat the employee as continuing in service and pay him his wages for the period, even though he may be subsequently placed under suspension and an enquiry initiated against him.

25. It is also worthwhile to extract the judgment referred to therein

13. Considering the scheme of Section 33 this Court, in the case of *Strawboard Manufacturing Co. v. Gobind*, [1962 (suppl.) 3 SCR 618] observed :

"Thus sub-section (1) lays down that if an employer proposes to discharge a workman in relation to a matter connected with the dispute which might be pending before a tribunal the employer must put such proposal before the tribunal and obtain its express permission in writing before carrying out the proposal whether it be for alteration of any conditions of service or for punishment or discharge of a workman by dismissal or otherwise.

Sub-section (2)(a) on the other hand gives power to the employer to alter any conditions of service not connected with the dispute and this the employer can do without approaching at all the tribunal where the dispute may be pending. It further permits the employer to discharge or punish, whether by dismissal or otherwise, any workman where this may be on account of any matters unconnected with the dispute pending before the tribunal; but such discharge or dismissal is subject to the proviso, which imposes certain conditions on it. The intention behind enacting subsection (2) obviously was to free the employer from the fetter which was put on him under Section 33 as it was before the amendment in 1956 with respect to action for matters not connected with a dispute pending before a tribunal. So far as conditions of service were concerned, if they were unconnected with matters in dispute the employer was given complete freedom to change them, but so far as discharge or dismissal of workmen was concerned, though the employer was given freedom, it was not complete and he could only exercise the power of discharge or dismissal subject to the conditions laid down in the proviso. Even so, these conditions in the proviso cannot be so interpreted, unless of course the words are absolutely clear, as to require that the employer must first obtain approval of the

tribunal where a dispute may be pending before passing the order of discharge or dismissal of a workman, for on this interpretation there will be no difference between Section 33(1) (b) and Section 33(2)(b) and the purpose of the amendment of 1956 may be lost". (emphasis supplied)

14. A Bench of three learned Judges of this Court, in the case of Punjab Beverages Pvt. Ltd. Chandigarh v. Suresh Chand and Anr. [1978 (3) SCR 370] held, inter alia, that the object of the legislature in enacting Section 33 clearly appears to be to protect the workman concerned in the dispute which forms the subject matter of pending conciliation or adjudication proceedings against victimisation by the employer. But at the same time it recognises that occasions may arise when the employer may be justified in discharging or punishing by dismissal his employee and so it allows the employer to take such action, subject to the condition that in the one case before doing so, he must obtain the express permission in writing of the Tribunal before which the proceeding is pending and in the other, he must immediately apply to the Tribunal for approval of the action taken by him. Thereunder this Court further held that the only scope of the inquiry before the Tribunal exercising jurisdiction under Section 33 is to decide whether the ban imposed on the employer by this section should be lifted or maintained by granting or refusing the permission or approval asked for by the employer. If the permission or approval is refused by the Tribunal, the employer would be precluded from discharging or punishing the workman by way of dismissal and the action of discharge or dismissal already taken would be void. (emphasis supplied) This Court also observed that Section 33 in both its limbs undoubtedly uses language which is mandatory in terms. In this connection this Court specifically observed : (at p.385)

"W
here the Tribunal entertains an application for approval under Section 33(2)(b) on merits, it applies its mind and considers whether the dismissal of the workman amounts to victimisation or unfair labour practice and whether a prima facie case has been made out by the employer for the dismissal of the workman. If the Tribunal finds that either no prima facie case has been made out or there is victimisation or unfair labour practice, it would refuse to grant approval and reject the application on merits. Then of course the dismissal of the

workman would be void and inoperative, but that would be because the Tribunal having held that no prima facie case has been made out by the employer or there is victimisation or unfair labour practice, it has refused to lift the ban." (emphasis supplied)

15. In the case of Tata Iron and Steel Co. Ltd. v. S.N. Modak [1965 (3) SCR 411], a Bench of three learned Judges of this Court, considered the effect of an order of the Tribunal refusing to accord approval to the order of dismissal or discharge of the workman and held: (at p.418)

"But it cannot be overlooked that for the period between the date on which the appellant passed its order in question against the respondent, and the date when the ban was lifted by the final determination of the main dispute, the order cannot be said to be valid unless it receives the approval of the Tribunal. In other words, the order being incomplete and inchoate until the approval is obtained, cannot effectively terminate the relationship of the employer and the employee between the appellant and the respondent; and so, even if the main industrial dispute is finally decided, the question about the validity of the order would still have to be tried and if the approval is not accorded by the Tribunal, the employer would be bound to treat the respondent as its employee and pay him his full wages for the period even though the appellant may subsequently proceed to terminate the respondent's service. Therefore, the argument that the proceedings if continued beyond the date of the final decision of the main industrial dispute would become futile and meaningless, cannot be accepted."

26. In State Bank of India Vs. Ram Chandra Dubey & Others, reported in 2001 (1) SCC 73, the Hon'ble Supreme Court, at paragraph Nos.7 & 8, held as follows:

"7. When a reference is made to an Industrial Tribunal to adjudicate the question not only as to whether the termination of a workman is justified or not but to grant appropriate relief, it would consist of examination of the question whether the reinstatement should be with full or partial back wages or none. Such a question is one of fact depending upon the evidence to be produced before the Tribunal. If after the termination of the employment, the workman is gainfully employed elsewhere it is one of the factors to be considered in determining whether or not reinstatement should be with full back wages or with continuity of employment. Such questions can be appropriately examined

only in a reference. When a reference is made under Section 10 of the Act, all incidental questions arising thereto can be determined by the Tribunal and in this particular case, a specific question has been referred to the Tribunal as to the nature of relief to be granted to the workmen.

8. The principles enunciated in the decisions referred by either side can be summed up as follows :

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C (2) of the Act. The benefit sought to be enforced under Section 33C(2) of the Act is necessarily a preexisting benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages."

27. In A.P.S.R.T.C & another Vs. S.Narsagoud, reported in 2003 (2) SCC 212, the Hon'ble Apex Court, at paragraph Nos.9 & 10, held as follows:

"9. There is a difference between an order of reinstatement accompanied by a simple direction for continuity of service and a direction where

reinstatement is accompanied by a specific direction that the employee shall be entitled to all the consequential benefits, which necessarily flow from reinstatement or accompanied by a specific direction that the employee shall be entitled to the benefit of the increments earned during the period of absence. In our opinion, the employee after having been held guilty of unauthorised absence from duty cannot claim the benefit of increments notionally earned during the period of unauthorised absence in the absence of a specific direction in that regard and merely because he has been directed to be reinstated with benefit of continuity in service.

10. The Regulations referred to hereinabove clearly spell out that the period spent on the extraordinary leave or leave without pay or a period of over-stayal after the expiry of leave or joining time cannot count towards increments unless the order of the competent authority sanctioning the extraordinary leave or leave without pay or the order commuting the period of over-stayal into extraordinary leave or leave without pay is accompanied by a specific order to count the period for increments. A period of unauthorised absence from duty treated as a misconduct and held liable to be punished by way of penalty cannot be placed on a footing better than the period of extraordinary leave or leave without pay or a period of over-stayal. Ordinarily, the increments are earned on account of the period actually spent on duty or during the period spent on leave, the entitlement to which has been earned on account of the period actually spent on duty. The direction of the High Court entitling the respondent to earn increments during the period of unauthorised absence from duty though held liable to be punished in departmental inquiry proceedings would amount to putting a premium on the misconduct of the employee."

28. In J.K.Synthetics Limited Vs. K.P.Agrawal and Another, reported in 2007 (2) SCC 433, Hon'ble Apex Court, dealt with an issue, as if whether an employee is entitled to automatic backwages, when an order of removal or dismissal, is set aside. Question No.ii framed by the Hon'ble Apex Court and the answer, are reproduced as hereunder.

" Re : Question (ii)

11. Learned counsel for the employee relied on several decisions of this Court to contend that where the order of dismissal or removal is set aside and the employee is directed to be reinstated, full back-wages should follow as a matter of course. Reliance is placed on the decisions of this Court in Hindustan Tin Works Pvt. Ltd., vs. Employees of Hindustan Tin Works Pvt. Ltd. [1979(2) SCC 80], Surendra Kumar Verma vs. Central Government Industrial Tribunal-cum-Labour Court, New

Delhi [1981 (1) SCR 789], and Mohan Lal vs. Bharat Electronics Ltd., [1981 (3) SCC 225].

12. Hindustan Tin Works Pvt. Ltd (supra), related to retrenchment of some workmen on the ground that the employer was suffering mounting losses. The labour court held that the real reason for retrenchment was the annoyance felt by the management when the employees refused to agree to its terms. Consequently, it directed the reinstatement with full back wages. That was challenged by the employer. This Court granted leave to appeal, only in regard to the question of back-wages, as it did not consider it necessary to interfere with the direction for reinstatement. Ultimately, while reducing the back-wages to 75%, this Court observed as follows :

"....If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case, viz., to resist the workman's demand for revision of wages the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.

11..In the very nature of things there cannot be a straight jacket formula for

awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour." [emphasis supplied]

13. Surendra Kumar Verma (supra) related to retrenchment of several workmen in violation of section 25-F of the Industrial Disputes Act, 1947 ('ID Act' for short). This Court held that when the order of termination is set aside as being invalid and inoperative, it must ordinarily lead to reinstatement as if the order of termination was never made and that would necessarily lead to back-wages too. This Court, however, observed that there may be exceptional circumstances which may make it impossible or wholly inequitable vis-a-vis employer and workmen to direct reinstatement with full back-wages as for example, when the industry might have closed down or might be in severe financial doldrums or where the concerned employee might have secured other employment elsewhere and in such situations, the court has the discretion to deny full backwages. In the concurring judgment Pathak J. (as he then was), held as follows :

"Ordinarily, a workman who has been retrenched in contravention of the law is entitled to reinstatement with full back wages and that principle yields only where the justice of the case in the light of the particular facts indicates the desirability of a different relief. It has not been shown to us on behalf of the respondent why the ordinary rule should not be applied."

14. Mohan Lal (supra) also related to retrenchment not in consonance with section 25-F of ID Act. This Court held:

"As pre-condition for a valid retrenchment has not been satisfied the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service.....

If the termination of service is ab initio void and inoperative, there is no question of granting reinstatement because there is no cessation of service and a mere declaration follows that he continues to be in service with all consequential benefits. Undoubtedly, in some decisions of this Court such as Ruby General Insurance Co. Ltd., vs. Chopra (P.P) [1969 (3) SCC 653] and Hindustan Steels Ltd., vs. A. K. Roy [1969 (3) SCC 513], it was held that the court before granting reinstatement must weigh all the facts and exercise discretion properly whether to grant reinstatement or to award compensation. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in this case."

15. But the manner in which 'back-wages' is viewed, has undergone a significant change in the last two decades. They are no longer considered to be an automatic or natural consequence of reinstatement. We may refer to the latest of a series of decisions on this question. In U.P. State Brassware Corpn. Ltd. vs Uday Narain Pandey [2006 (1) SCC 479], this Court following Allahabad Jal Sansthan vs. Daya Shankar Rai [2005 (5) SCC 124], and Kendriya Vidyalaya Sangathan vs. S.C. Sharma [2005 (2) SCC 363] held as follows :

"A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance."

".....although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result, but now, with the passage of time, a pragmatic view of the matter is being taken by the courts realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched..... The changes (were) brought about by the subsequent decisions of the Supreme Court, probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalization, privatization and outsourcing, is evident."

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of section 6-N of the U.P. Industrial Disputes Act..... While granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages cannot therefore be the natural consequence.

In *General Manager, Haryana Roadways vs. Rudhan Singh* [2005 (5) SCC 591], this Court observed :

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

16. There has also been a noticeable shift in placing the burden of proof in regard to back wages. In *Kendriya Vidyalaya Sangathan (supra)*, this Court held :

".....When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he

places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard."

In U.P. State Brassware Corpn. Ltd. (supra), this Court observed :

"It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of section 106 of the Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman."

17. There is also a misconception that whenever reinstatement is directed, 'continuity of service' and 'consequential benefits' should follow, as a matter of course. The disastrous effect of granting several promotions as a 'consequential benefit' to a person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically. Whenever courts or Tribunals direct reinstatement, they should apply their judicial mind to the facts and circumstances to decide whether 'continuity of service' and/or 'consequential benefits' should also be directed. We may in this behalf refer to the decisions of this Court in A.P.S.R.T.C. v. S. Narasa Goud [2003 (2) SCC 212], A.P.S.R.T.C. v. Abdul Kareem [2005 (6) SCC 36] and R.S.R.T.C. v. Shyam Bihari Lal Gupta [2005 (7) SCC 406].

18. Coming back to back-wages, even if the court finds it necessary to award back-wages, the question will be whether back-wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back-wages, in addition to the several factors mentioned in Rudhan Singh (supra) and Udai Narain Pandey (supra). Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on

the terminated employee to search for or secure alternative employment. Be that as it may.

19. But the cases referred to above, where back-wages were awarded, related to termination/retranchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the court found that the termination was motivated or amounted to victimization. The decisions relating to back wages payable on illegal retranchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or section 11A of the Industrial Disputes Act (or any other similar provision) is exercised by any Court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back-wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked,

may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back-wages etc. will be the same as those applied in the cases of an illegal termination.

21. In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all."

29. Decisions relied on by Mr.P.Paramasivadosh, learned counsel for Managing Director, Tamilnadu State Transport Corporation (Salem) Limited, Salem, appellant herein are not applicable to the case on hand. They would lend support, only in a case, where there is reinstatement simplicitor.

30. In the case on hand, application filed for approval of dismissal has been discussed and that the same has attained finality in W.A.No.1462 of 2012 dated 16.07.2013. On the contra, decisions in Jaipur Zila's Case [cited supra] and Neethivilangan's case [cited supra], which state that when the Approval Petition is dismissed, then the employer is bound to treat the employee as continued in service, and that he is entitled to all consequential benefits, backwages and all attendant benefits, would squarely apply to the case on hand. There is no manifest error in the order impugned before us. Hence, Writ appeal is liable to be dismissed.

31. Contending inter alia that the order made in W.P.No.10246 of 2015, dated 08.06.2015, impugned before us has not been complied with, respondent/workman has filed contempt petition No.541 of 2016 and that the same is stated to be listed on 19.09.2017.

32. While confirming the order made in W.P.No.10246 of 2015 dated 08.06.2015, we grant four weeks time from today, to calculate and disburse the arrears of backwages and other attendant benefits due and payable to the respondent/workman from 20.01.1996, the date on which, he was dismissed from service till 31.12.2008, the date on which, he attained the age of superannuation and also to pay arrears of pension, as per the Pension Rules applicable to the respondent. It is also made clear that if payment is not made within such time directed by this Court, interest at the rate of 6% on the above, be added.

33. With the above directions, Writ Appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Managing Director,
Tamilnadu State Transport Corporation (Salem) Ltd.,
12, Ramakrishna Road,
Salem - 636 007.

+1cc to Mr.J.Saravanavel, Advocate, S.R.No.67808

W.A.No.1164 of 2017
and

C.M.P.No.16206 of 2017

NRI (CO)
CA(23/10/2017)

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