

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.10.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

W.P. NO. 24490 OF 2016

AND

W.M.P. NO. 20917 TO 20920 OF 2016

G.Thirugnanam

.. Petitioner

- Vs -

1. The Special Deputy Commissioner
of Labour, DMS Compound
Teynampet, Chennai 600 006.
2. The Managing Director
Tamil Nadu State Transport
Corporation (Salem) Ltd.
12, Ramakrishna Road, Salem.
3. The General Manager
Tamil Nadu State Transport Corporation
Dharmapuri Region
Krishnagiri District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records connected with the order passed by the 2nd respondent in his proceedings No.619/14046/D3/D4/TNSTC/2012 dated 22.03.2014 which confirms the order of dismissal dated 09.04.2013 passed by the 3rd respondent in his proceedings No.619/14046/D3/TNSTC/2012 quash both the orders and also direct the 2nd and 3rd respondents/Management to reinstate the petitioner with all service benefits including monetary benefits on the basis of the information furnished by the Office of the 1st respondent/Authority in proceedings Letter No.C1/003037/2016 dated 16.2.2016 that "no approval petition in Form-T for the dismissal of the petitioner was received from the respondent/Corporation".

For Petitioner : Ms. S.Girija

For Respondent : Ms. S.Rajeni Ramdoss for RR-2 & 3
Mr. K.K.Ramesh, GA for R-1

ORDER

This writ petition has been filed by the workman seeking enforcement of the order of reinstatement on the ground that no approval has been obtained by the Management from the approval authority.

2. The facts of the case disclose that due to certain lapses on the part of the workman, after due enquiry, he was dismissed from service. Due to certain pending disputes, approval petition ought to have been filed before the approving authority for necessary approval. However, till date no approval having been granted by the approving authority, the present petition has been filed by the petitioner seeking reinstatement.

3. Learned counsel appearing for the Management submits that copy of the approval petition has been sent to the workman along with order of termination and, therefore, it is not a case where approval is not sought for. It is also pointed out that the approving authority would have received the approval application, a copy of which has also been sent to the workman herein, who has received the same.

4. Learned counsel appearing for the workman placed reliance on the information received from the Public Information Officer of the 1st respondent with whom the workman has sought for information regarding filing of approval petition. The Public Information Officer has stated that no such approval application has been received by the Management in respect of dismissal of the workman.

5. This Court bestowed its best attention to the contentions advanced on either side and also perused the materials available on record.

6. A perusal of the documents submitted by the Management reveals about sending the copy of the approval petition to the approving authority. May be it is true that the application may have been sent, but it is the duty of the Management to ensure that the application sent is received and taken on file and also to ensure that final orders are passed on the said petition. However, curiously, the Management has not taken any steps for obtaining orders on the approval petition. In the above backdrop, though it is the contention of the Management that the approval petition has been sent, however, there is no material

on record to show that the same was received by the approving authority.

7. Further, it is to be pointed out that the reply sent by the Public Information Officer for the query made by the workman under the RTI Act is not a blanket communication, but it is a communication which reveals that the records and ledgers relating to the period were verified and it was found that there is no entry with regard to the receipt of the approval petition relating to the above workman. An independent authority, exercising jurisdiction under the Right to Information Act could not have given a wrong information and in fact he has given a reasonable explanation for coming to such conclusion that the approval petition has not been received at the office of the approval authority.

8. Learned counsel appearing for the Management pleaded that an opportunity should be given to the Management to seek approval and this Court may issue a direction to the approving authority to dispose of the petition within a limited time frame. However, such a step should have been taken by the Management by filing an independent petition, if really the Management was interested in getting orders on the approval petition. In the petition filed by the workman challenging the non-implementation of order of reinstatement, praying for a direction, as above, would defeat the very purpose of the writ petition filed by the workman. Therefore, the above request of the learned counsel for the Management cannot be entertained.

9. Learned counsel for the workman relied upon the decision of the Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. - Vs - Ram Gopal Sharma & Ors. (2002 (2) SCC 244), wherein, similar circumstances were considered by the Supreme Court and it has been held as under :-

"15. 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 33-A 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."

10. The ratio laid down in Jaipur Zilla case (supra) squarely stands attracted to the case on hand. The approval petition having not been pursued and prosecuted, the Management has to face the consequences. It cannot hide under the garb of pleading about allegedly sending a petition, but not taking any steps for having an order passed on the same.

11. In the above circumstances, the writ petition is allowed. It is reported that the petitioner has already attained the age of superannuation. Therefore, there can be no order of reinstatement, but only continuity of service for the purpose of calculation of terminal benefits.

12. Though the learned counsel appearing for the Management submits that the petitioner is not entitled to any backwages, the petitioner having not worked. This contention is untenable as for the fault of the Management in not getting any orders passed on the approval petition, the petitioner cannot be deprived of backwages. However, considering the entire gamut of facts, this Court deems it fit that the petitioner would be entitled to 50% of backwages.

13. Accordingly, the writ petition is allowed with a direction to the respondents to pay 50% of the backwages and also to calculate the terminal benefits and pay the same to the petitioner within a period of four weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Special Deputy Commissioner
of Labour, DMS Compound
Teynampet, Chennai 600 006.

2. The Managing Director
Tamil Nadu State Transport
Corporation (Salem) Ltd.
12, Ramakrishna Road, Salem.

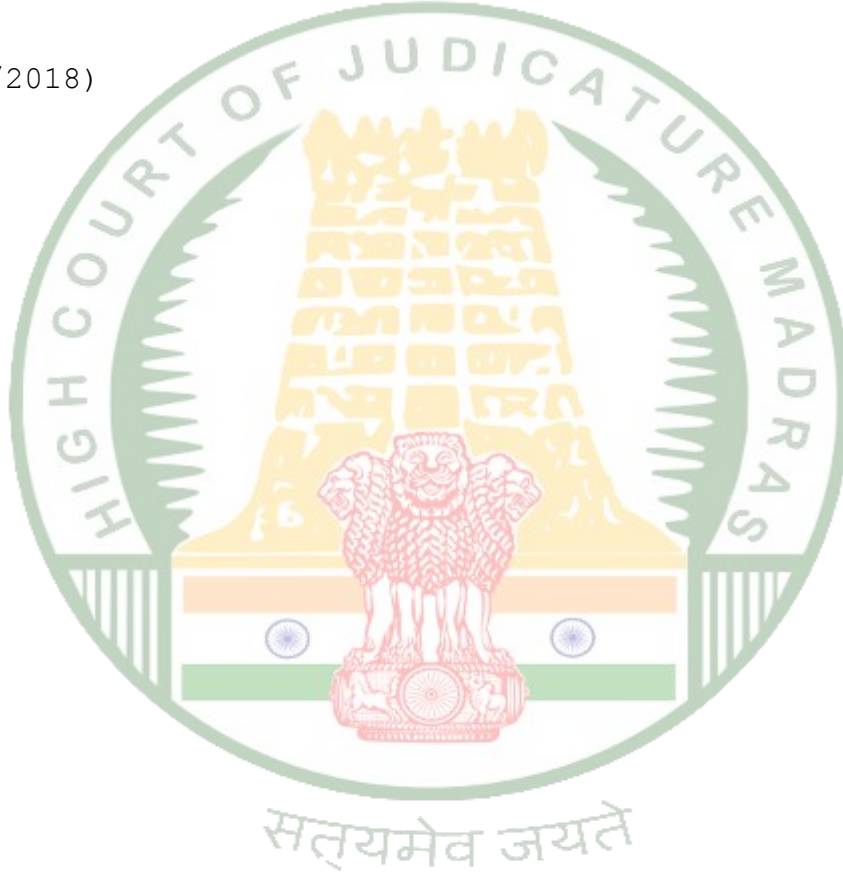
3. The General Manager
Tamil Nadu State Transport Corporation
Dharmapuri Region
Krishnagiri District.

+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.73175
+1cc to Mr.S.Girija, Advocate, S.R.No.72658(20/12/2018)

+1cc to the Government Pleader, S.R.No.73474

W.P. NO. 24490 OF 2016

VGII(CO)
GSP(12/12/2018)



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