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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6/9/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.2038 of 2018

The Management
Tamil Nadu State Transport Corporation
(Kumbakonam Division - III) Ltd
Marudhupathy, Man-kiri Road
Karaikudi 630 307.

... Appellant

Vs

1. The Joint Commissioner of Labour
(Conciliation)
Chennai 600 006.

2. U. Jayakumar

.. Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 6/6/2012, made in W.P.No.2299 of 2008.

W.P.No.2299 of 2008

Writ Petition preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the records of the first respondent relating to the order dated 23.08.2007 made in Approval Petition No. 61 of 2004 on the files of the first respondent and quash the same.

For appellant ... Mr.K.Rangesh
for Mr.D.Venkatachalam

For respondents ... Ms.D.Selvakumari
for R.2.

J U D G M E N T

(Judgment of the Court was made by SUBRAMONIUM PRASAD, J)

Instant Writ Appeal is directed against the order, dated 6/6/2012, made in W.P.No.2299 of 2008.



2. The second respondent was working as a Conductor with the petitioner, Tamil Nadu State Transport Corporation. On 21/12/2002, in a bus bearing Registration No.TN63-499, in the route Manamadurai to Thayamangalam, he punched ticket number 63435 in the 'up trip' and ticket numbers 436, 437 and 438, in the 'down trip'. Charge memo was issued to him, on 2/1/2003 and to which an explanation was given by the second respondent. Enquiry was conducted, on 22/1/2003 and 25/1/2003. Enquiry Officer gave a report, finding the second respondent guilty of charges. Based on the enquiry report, show cause notice, dated 31/1/2003 was given to the second respondent. Notwithstanding the reply, by an order, dated 19/11/2003, he was dismissed from service.

3. Since, Conciliation Proceedings were pending before the Commissioner of Labour, the Management was required to file an Approval Petition, under Section 33 (2) (b) of the Industrial Disputes Act. Vide order, dated 23/8/2007, labour Court held as follows:-

(i). Enquiry was conducted in accordance with the principles of natural justice.

(ii). Findings of the Enquiry Officer was completely perverse.

(iii). Enquiry Officer had not at all stated as to why he had come to the conclusion that charges are proved. He has not considered any evidence in favour of the employee and that he had only recited the evidence presented by the management.

(iv). Management had not paid one month wages, as required to be paid, under Section 33 (2) (b) of the Industrial Disputes Act.

4. Being aggrieved, State Transport Corporation has filed Writ Petition No.2299 of 2008.

5. Vide, order, dated 6/6/2012, after referring to the cases in (i). Strawboard Manufacturing Company Vs. Gobind, reported in 1962 Vol (I) LLJ 420 = AIR 1962 SC 1500; (ii). M Karnataka Agro Industries Corporation Ltd., Vs. Industrial Tribunal and another, reported in 1984 (64) FJR 179 and (iii). Palaniswami Vs. Indian Hume Pipe Co., reported in 1965 (2) LLJ - 541, which held that if calculation of one months pay, is not in accordance with law, then approval cannot be granted by the authorities, a learned Single Judge held as under:-

"In the present circumstances, there was no explanation for the shortfall of one month's pay. The very idea of Parliament introducing Section 33 of the I.D.Act was to clothe the



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Conciliation Officer the power to supervise the action of the employer pending conciliation of dispute raised by the workman. The petitioner cannot seek approval of their action by not complying with the statutory conditions of precedent found under the Act.

6. Heard Mr.K.Rangesh for the State Transport Corporation and Ms.D.Selvakumari for the second respondent/Conductor and perused the materials available on record.

7. There is no explanation by the Transport Corporation, even before us, on the failure to comply with the mandate, of Section 33 (2) (b) of the Industrial Disputes Act. Argument that the short fall, in

payment of one month wages was due to calculation mistake, and that it cannot be taken as fatal, cannot be accepted.

8. It is well settled law that even if principles of natural justice has been complied with, the labour Court can always interfere with the findings of the Enquiry Officer, on the ground that such finding is perverse. That question need not be gone into, in view of the fact that mandate, under Section 33 (2) (b) of the Industrial Disputes Act, has not been complied with, since the respondent has not been paid wages, for one month. Payment of one month's salary or wages is to soften the rigour of unemployment, that will face the workman against whom, an order of discharge or dismissal has been passed. This payment, to the discharged or dismissed workman, is a mandatory requirement, which should be complied with, at the time of taking the action or within a reasonable time thereafter. The Hon'ble Supreme Court in Bharat Electronics Ltd, Bangalore Vs. IT (1990) 2 LLJ 32.38 (SC) held, "To pay even a paisa less than the month's wage due under Section 33(2)(b) would be fatal to the permission sought". In the light of the above discussion and decisions, there is no infirmity in the order passed by the learned Single Judge, warranting interference, in the instant Writ Appeal.

9. In view of the above, Writ Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mvs/pkn



To

The Joint Commissioner of Labour
Conciliation)
Chennai 600 006.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.62534

Writ Appeal No.2038 of 2018

PPA (CO)
GSP (24/10/2018)