

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.705 of 2016
and C.M.P.No.9256 of 2016

The Management
Metropolitan Transport Corporation
Pallavan Salai, Pallavan Illam
Chennai 6002002.

...Appellant

Vs

S.Yogaraj

...Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.15722 of 2008 dated 29.11.2013.

W.P.No.15722 of 2008:-

filed under Article 226 of Constitution of India pleaded to issue writ, direction or order in the form of Writ of Certiorari mandamus calling for the entire records connected with the proceedings of the respondent Lr.No.4547/FP/Pension/MTC/8 dated 18.03.2008 and quash the same, consequently direct the respondent to settle all my terminal benefits and to pass such further.

For Appellant : Ms.Rajini Ramadoss

For Respondent : Mr.S.T.Varadarajulu

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The respondent was removed from service by the appellant on account of unauthorised absence. The order was passed on 27 October, 2003. Before passing the order, the appellant filed a petition before the Joint Commissioner of Labour (Conciliation) under Section 33(2)(b) of the Industrial Disputes Act, for permission to take disciplinary proceedings on account of the pendency of a dispute pending between the employer and the

employees. The approval petition was withdrawn by the appellant and thereafter, punishment was imposed on the respondent.

2. The respondent was convicted by the Sessions Court for an offence under Section 304(i) of IPC and sentenced to undergo Rigorous Imprisonment for 7 years. The judgment was confirmed by the High Court. The related Special Leave Petition was dismissed by the Hon'ble Supreme Court. The respondent after undergoing the sentence, made a claim for payment of pension on the ground that his dismissal was not correct on account of the failure to obtain approval from the statutory authority taking into account the pendency of the dispute. The representation was rejected by the appellant. The order was challenged before the Writ Court in W.P.No.15722 of 2008. The learned Single Judge found that there was a dispute pending before the authority and as such, the appellant was not correct in dismissing the respondent from service without prosecuting the approval petition. The writ petition was allowed. The order is under challenge at the instance of the Management.

3. We have heard the learned Standing Counsel for the appellant. We have also heard the learned counsel for the respondent.

4. The documents available on record clearly indicate that there was a dispute pending between the Metropolitan Transport Corporation and its employees relating to bonus during the period in question. It was only because of the pendency of the dispute, the appellant filed a petition before the Joint Commissioner of Labour (Conciliation) under Section 33(2)(b) for approval to take action against the respondent. The appellant, for the reasons best known, appears to have withdrawn the said application. Thereafter, the respondent was dismissed from service.

5. The materials available on record very clearly show that even with respect to the disciplinary proceedings involving other employees, the appellant filed petition for approval under Section 33(2)(b) before the Conciliation Officer and only after obtaining approval, punishment was imposed. Therefore, it is very clear that a dispute was pending during the period in question. The learned Single Judge was therefore, justified in setting aside the order passed by the appellant and directing the Management to pay pension to the respondent. We do not find any error or illegality in the said order warranting our interference.

6. The learned counsel for the appellant submitted that the respondent has already withdrawn the employer's contribution and as such, the said amount should not be taken into account while

fixing pension. It is open to the Management to calculate the pension taking into account the service particulars of the employee, including the facts relating to the payment of the employer's contribution. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this judgement.

The intra court appeal is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gms

To

The Management
Metropolitan Transport Corporation
Pallavan Salai, Pallavan Illam
Chennai 6002002.

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.11068
+1cc to Ms.Rajini Ramadoss, Advocate, S.R.No.10790

W.A.No.705 of 2016

KJI (CO)
CS/14/03/18

सत्यमेव जयते

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