

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
and
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A. No.2422 of 2013

V.Palani ..Appellant/Defendant

Vs

1.The Management,
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road,
Dindigul. ...1st Respondent/ Petitioner

2.The Commissioner of Labour,
Teynampet,
Chennai 600 018. ...2nd Respondents/2nd Respondent

PRAYER: Appeal is filed under Clause 15 of Letters Patent, against the order dated 25.02.2013 passed by the learned Single Judge in W.P.No.12956 of 2004 praying to call for the records from the file of Commissioner of Labour, Chennai being the second respondent in Approval Petition No.13/2003 in the matter of Ref No.C1/18591/2002 and quash the order passed thereon dated 14.11.2003.

For Appellant : Mr.A.V.Arun
For Respondents : Mr.Rajni Ramadoss for R1
Mr.A.N.Thambidurai for R2
Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by C.V.KARTHIKEYAN, J.]

The present Writ Appeal has been filed by the Workman, calling to question the order of the learned Single Judge in W.P.No.12956 of 2004, dated 25.02.2013.

2. The Writ Petition was filed by the Management, Tamilnadu State Transport Corporation in the nature of Certiorari to quash the order of rejection of Approval Petition No.13/2003. The Approval Petition No.13 of 2003 had been preferred by the Management under Section 33(2) (b) of the Industrial Disputes Act, since there was an obligation placed on the Management to seek approval from the appropriate Authority to enforce an order of dismissal, if an Industrial Dispute was pending between the Management and the Union. In this case, the Management had terminated the Workman on the charge of issuance of an used ticket to a passenger after collecting Rs.15/-. An enquiry was conducted. After the enquiry, the charges were held to have been proved and an order of dismissal was imposed on the Workman. Accordingly, the Management filed Approval Petition No.13/2003.

3. One of the conditions stipulated under Section 33(2) (b) of the Industrial Disputes Act was that the last drawn wages should be paid to the Workman. In this case, while paying the last drawn wages, the Management had paid a sum of Rs.7894/-. However, it had been found that though the order of dismissal was dated 27.01.2003, subsequently on 25.02.2003, the Dearness Allowance was increased by 51-55% and this difference in percentage had not been paid to the workman. Pointing this fact as an error which vitiated the proceedings, the Appropriate Authority had thought it fit to reject the Approval Petition. Challenging the said impugned order of rejection for approval, the Management had filed the Writ Petition.

4. The Writ Petition was allowed by the learned Single Judge. The relevant portion is extracted below for ready reference:

"5. It is not in dispute that the first respondent was working as conductor in the petitioner Management and he has been terminated from service on the grave allegation that he has issued an used ticket to a passenger after collecting Rs.15/- and thereby committed misappropriation of money of the petitioner Corporation, for which enquiry has been conducted. According to the first respondent, enquiry has not been fairly conducted. But any how, the enquiry officer has given a finding that the charge against the first respondent has been proved and he is guilty of the offence. Thereafter, charges framed and finding of the enquiry officer has been communicated to the first respondent. Bank Draft for a sum of

Rs.7894/- towards one month's salary also has been given and he has been terminated from service with effect from 27.1.2003. Subsequently, on 25.2.2003 Dearness Allowance has been enhanced to 51-55% which has not been paid to the first respondent. Thereafter, application has been filed before the Commissioner of Labour, for approval of the termination. According to the Commissioner of Labour, since the petitioner Corporation had not included the revised variable D.A. amount due to the first Respondent while tendering one month wages, the mandatory requirements of the proviso to Section 33(2)(b) of the Act was not complied with and therefore, the order of dismissal is inoperative in law. Therefore, the application of the petitioner Corporation is not maintainable. Ultimately, the application for approval has been rejected.

6.As per Section 33(2)(b) of the Act, for non payment of the revised increased Dearness Allowance approval cannot be rejected. Hence, the order of rejection of approval under Section 33(2)(b) of the Act, is not correct. Hence, the writ petition is allowed and the order of rejection of approval is set aside. No costs.

7. It is made clear that so far as the termination of service of the first respondent is concerned he is at liberty to agitate the same by way of separate proceedings and this order will not preclude him from doing so. The petitioner/Management is directed to pay the subsequent revised Dearness Allowance for the period in question to the first respondent within two months from the date of receipt of copy of this order. WPMP No.15086/2004 is closed."

5. The learned Single Judge had set aside the order of rejection of the Approval Petition and had also given a direction that the Workman can raise an Industrial Dispute under Section 2-A of the Industrial Disputes Act, 1947 questioning the order of dismissal.

6. The Workman has however filed this Writ Appeal before us challenging the said order.

7.Learned counsel for the Workman, Mr.A.V.Arun, submitted that there was an obligation cast on the Management to pay the last drawn wages while preferring an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947. He pointed out that the difference in

the Dearness Allowance, which came into force subsequent to the date of order of dismissal had not been paid.

8. We do not agree with that contention. We hold that the learned Single Judge had correctly held that non payment of the difference in the Dearness Allowance would not vitiate the Approval petition filed by the Management. The order of dismissal was 27.01.2003 and enhancement of the Dearness Allowance was on 25.02.2003. The pay as on 27.01.2003 should be paid and the Management had complied with that stipulation. We therefore find no reason to interfere with the order of the learned Single Judge. It was pointed out by Mr.A.V.Arun that the order of dismissal was of the year 2003 and by this passage of time, it would be highly impossible for records to be available for appreciation by the Labour Court. We hold that it is the duty of both sides to establish their case by letting in credible evidence.

9. We therefore dismiss the Writ Appeal, however granting permission to the Workman, as also granted by the learned Single Judge, to raise an Industrial Dispute in accordance with law within a period of one month from today. Accordingly, the Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Management,
Tamilnadu State Transport Corporation (Madurai) Ltd.,
Bye Pass Road,
Dindigul.

2. The Commissioner of Labour,
Teynampet,
Chennai 600 018.

+1cc to Mr.M.V.Arun , Advocate SR.No. 62540

+1cc to Mr.S.Rajini Ramadoss, Advocate SR.No. 62596

W.A.No.2422 of 2013

A.SK(06/09/2019)