

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.23714 of 2004
and
WPMP.No.28734 of 2004

The General Manager,
Tamilnadu State Transport Corporation,
Kumbakonam
Pudukkottai Region,
Formerly known as
M/s.Veran Alagumuthu Kone Transport,
Corporation Ltd.,
Pudukkottai.

.... Petitioner

Vs.

1. The Industrial Tribunal.
High Court Campus,
Chennai 600 104.
2. Thiru.P.Jayapal (deceased)
3. Premalatha
4. J.Jayakumar
5. J.Rajan Premkumar

...Respondents

[R3 to R5 are substituted as LRs of the
deceased R2 as per the order of this Court,
dated 07.03.2019 in WMP.No.34223 of 2008
in WP.No.23714 of 2004]

Prayer: Writ petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari, calling for
the records from the file of the Industrial Tribunal, Chennai
being the 1st respondent herein in Approval Petition No.13 of 97
in ID.No.62 of 82 and quash the order passed thereon on
22.08.2003.

For Petitioner : Mr.V.R.Kamalanathan

For Respondents : R1 - Tribunal
Mr.R.D.Ashok Kumar,
for Mr.S.N.Ravichandran, for RR2 to 5

O R D E R

This petition is filed to quash the order of the first respondent herein in Approval Petition No.13 of 97 in ID.No.62 of 82 dated 22.08.2003.

2. The second respondent herein was originally employed as a driver from 01.08.1979 under the Pandian Roadways Corporation, and his service was confirmed from 01.08.1980 onwards.

3. It is the case of the petitioner herein that when the second respondent had unauthorisedly absented himself from attending duty from 02.12.1996 onwards, a charge memo was sent to the second respondent by RPAD to his last known address, which was returned unserved. Later, an enquiry notice was sent to the second respondent by RPAD, which was also returned. Since the second respondent did not attend the enquiry, an ex-parte enquiry report came to be filed and the service of the second respondent was proposed to be dismissed for the proven charges and based on the said proposal, a show cause notice was sent, which also came to be returned.

4. Since at the time of the order of dismissal, an Industrial Dispute in I.D.No.62 of 1982 was pending before the Industrial Tribunal, an application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 came to be filed before the first respondent seeking for approval of the proposed punishment. The first respondent herein, by the impugned order dated 22.08.2003, rejected the petitioner's claim for approval. Hence, the present Writ Petition.

5. The learned Standing Counsel appearing for the petitioner submitted that the initial show cause notice as well as the enquiry notice and the subsequent show cause notice for the proposed punishment, were sent to the second respondent to the last known address, which was returned and therefore, such service is deemed to have been completed on the second respondent. As such, the learned Standing Counsel submitted that the finding of the first respondent-Tribunal that the notices were not duly served on the second respondent, is incorrect.

6. The learned counsel for the respondents 2 to 5, on the other hand, submitted that the second respondent had never received any notice with regard to the disciplinary action initiated. According to him, the petitioner-Management had sent notices to the wrong address, where the second respondent was not residing and therefore, such dispatch of notice cannot be termed as proper service. Since the proposed punishment was without any notice having been served on the second respondent, the order of the Tribunal requires no interference.

7. I have given careful consideration to submissions made by the respective counsels.

8. Before venturing into the validity of the impugned order passed by the first respondent, it would be appropriate to mention here that the second respondent had expired during the pendency of the Writ Petition on 17.04.2019. Even prior to that, he had reached the age of superannuation on 31.05.2004 itself. The legal heirs of the second respondent herein have been impleaded as respondents 3 to 5 in this Writ Petition.

9. The impugned order of the Tribunal though appears to be exhaustive, the observations in paragraph 10 of the impugned order are to the effect that the notices were admitted to have been served on the second respondent, but actually the same were not received by him and therefore, there is a violation of the principles of natural justice. Hence, the application seeking for approval came to be rejected.

10. Since the first respondent herein had not gone into the details with regard to the endorsement in the postal return covers, which were marked before the Tribunal, the order itself, in normal circumstances, may be required to be re-considered by way of remission. However, in the present case, the second respondent had expired and at this belated stage, if the matter is remanded to the first respondent, no useful purpose would be met, since there cannot be any effective representation by the respondents 3 to 5, as legal heirs on behalf of the second respondent.

11. In this background, the petitioner Management was required to submit about the endorsement made in the postal return covers allegedly sent to the second respondent herein. The learned counsel for the petitioner Management produced the copy of the returned covers, which evidences that the notices that were sent by the Management to the second respondent had returned with an endorsement "no such person".

12. While that being so, the learned counsel for the second respondent submitted that the notices were sent to the wrong address, gains prominence. When the petitioner had sent notices to the address in which the second respondent was not residing, the exercise of reconsideration by the first respondent Tribunal would be a futile exercise, since it has been established before this Court that there was no proper service of notices prior to the proposed order of dismissal. On this ground, the order of proposed dismissal from service requires interference.

13. The learned counsel for the respondents 2 to 5

submitted that when a person dies during the pendency of the disciplinary action and when the departmental proceedings are pending against him, such period requires to be considered for payment of pension and other benefits. In support of his submission, the learned counsel placed reliance on the decision of the Division Bench of this Court reported in 2008 1 MLJ 1127 (G. Vani vs. Registrar, High Court, Chennai).

14. Since the application filed by the petitioner under Section 33 (2) (b) of the Industrial Disputes Act 1947 has been rejected by the first respondent herein, it can only be held that the second respondent herein is deemed to have been in service from the date of the order of dismissal, since the order of dismissal has abated. During the pendency of the Writ Petition, the second respondent had reached the age of superannuation and as such, he is deemed to have been in service till he attained his age of superannuation. The disciplinary proceedings are also deemed to have been continued till his date of death, since no finality has been reached by imposition of a punishment or exoneration.

15. The Division Bench of this Court reported in G. Vani's case (cited supra) has held that when the delinquent expires during the pendency of the disciplinary proceedings, the departmental proceedings are deemed to be pending during such time and as such, the said period would also be taken into consideration for the purpose of pension and other benefits. The relevant portion of the said order reads as follows:

"7. We find sufficient force in the above submissions. A departmental proceeding is deemed to be pending until it culminates in imposition of punishment or exoneration, as the case may be. Obviously, such order of punishment or exoneration has to be passed by a competent authority. Since the order of punishment was found to be invalid having been passed by an authority not competent to pass such order, it must be taken that such order of punishment was non est in the eye of law. (In this connection, reference can be made to the decision of the Supreme Court in Baradakanta Mishra v. High Court of Orissa and another AIR 1976 SC 1899: (1976) 3 SCC 327. Thus, it must be taken that the departmental proceedings had not been finalised during the life time of the concerned officer. Rule 54-B-1(2) is a specific provision applicable to such a case."

16. For all the foregoing reasons, this Court is of the view that no interference is required in the impugned order of the Tribunal rejecting the petitioner's application under Section 33(2)(b) of the Industrial Disputes Act. Since the approval application itself has been rejected, the proposed

punishment of the dismissal becomes redundant and it is to be viewed as not in existence. Consequently, the second respondent is deemed to have been in service without reference to any punishment. As such, the petitioner herein is directed to extend the DCRG benefit as well as the pension benefits to the respondents 3 to 5 herein, after verifying the necessary legal heirship certificate. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

17. With the above observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The General Manager,
Tamilnadu State Transport Corporation,
Kumbakonam, Pudukkottai Region.
2. The Industrial Tribunal,
High Court Campus, Chennai 600 104.

+1cc to Mr.S.N.Ravichandran, Advocate, S.R.No. 29950
+1cc to Mr.V.R.Kamalanathan, Advocate, S.R.No. 29669

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W.P.No.23714 of 2004

CA(CO)
GN(10/05/2019)

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