

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM

THE HON'BLE Mr. JUSTICE S.VAIDYANATHAN

W.P.No.27070 of 2013

The General Managerial
State Express Transport Corporation,
Tamil Nadu Ltd
Pallavan Salai
Chennai 600 002. Petitioner

Vs

1.The Special Deputy Commissioner of Labour
Teynampet, Chennai.

2.K.V.Devanathan Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of Certiorari to call for the records in order dated 27.12.2012 in A.P.No.49/2010 in C/37589/07 on the file of the Special Deputy Commissioner of Labour, Teynampet, Chennai and to quash the same.

For Petitioner: Mr.R.P.Prathap Singh

For Respondents: Mr.P.Sivashanmuga Sundaram
Special Government Pleader for R1

Mr.J.Muthukumaran for R2

O R D E R

The petitioner Management has come forward to file this writ petition challenging the order of the Special Deputy Commissioner of Labour, dismissing the Approval Petition filed under Section 33(2) (b) of the Industrial Dispute Act, 1947. It is the case of the Management that the Workman was appointed as Tradesman in the year 1992 and continuously he was absented himself from duty, for which a show cause memo was issued and enquiry was conducted and thereafter following due procedure including the issuance of second show cause notice and having not satisfied with the explanation to the second show cause notice, imposed a punishment of dismissal from service on

28.05.2010. The petitioner was also paid one month wages which is required in terms of the provisions of the Act. According to the petitioner, 27.12.2011 is a Friday and the next working day on 31.12.2011, an application in terms of Section 33 (2) (b) of ID Act, 1947 was filed before the authority.

2. The authority has framed five issues and in that authority has rendered a finding that the employee has been paid full one month wages and that there is no evidence as to when the charge memo was issued to the Workman and as to whether that charges have been established before the authority in duly and fairly conducted enquiry. However, with regard to the issue, the authority has also found that there is no question of victimization on the ground that employer has not filed an application before the authority simultaneously and that there is no evidence to show that copy of dismissal order has been despatched to the Workman and the Approval Petition has been rejected. The scope of a Approval petition to be decided by the authorities is very limited. There is no iota of evidence filed by the Management before the authorities that the copy of dismissal order dated 28.05.2010 has been served on the Workman. Since, 27.12.2011 being Friday, they have immediately filed it on the next working day and it is to be construed that the application has been filed simultaneously.

3. A customary reading of Section 32(2)(b) including provisions mentioned therein, apart from Rule 64 (2) would make it very clear that the employer who has sent the approval on the action in divesting the services of employee, needs to submit an application either personally or by registered post and copy of which has got to be simultaneously dispatched to the Workman. In fact the application has got to be dispatched to the Workman and the same to be filed along with the postal receipt before the labour forum. In this case, there is no iota of evidence to the effect that the employer has complied with the mandatory provisions contemplated under the provisions. Hence the authority was right in rejecting the approval petition. Hence I find no reason to interfere with the order.

4. At this juncture, it is represented by the Workman that pursuant to his reinstatement into service with effect from 15.05.2016, he has filed an affidavit of undertaking dated 22.08.2019, agreeing to give up 50% backwages for the period during which he was not provided with job. For the sake of brevity, the relevant Paragraph No.7 of the affidavit dated 22.08.2019 is extracted hereunder:

"7. I humbly submit that I prays that this Hon'ble Court may pleased to direct the petitioner to pay 50% of the Backwages from the date of my dismissal on 28.05.2010 till the date of reinstatement...."

5. It is pertinent to mention here that once the Approval Petition filed by the Management is rejected by the Authority, the Workman is deemed to be in service, as if there is no order of dismissal as reported in the case of the Tata Iron and Steel Company Ltd., Vs. G.Ramakrishna Ayyar and Another reported in 1950 LLJ 1043 Madras High Court and hence, the Workman would be entitled to all other benefits, as if he has not been disengaged from service except for backwages of 50%, which he has agreed to give up. If the employer refuses to pay the 50% backwages within 45 days from the date of receipt of this order, the undertaking i.e, giving up of 50% backwages would be lapsed and the employee would be entitled to 100% benefits.

6. The writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To:

The Special Deputy Commissioner of Labour
Teynampet,
Chennai.

+1cc to Mr.R.P.Prathap Singh, Advocate SR.No.75915

+1cc to Mr.J.Muthukumaran, Advocate SR.No.75909

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GP (CO)
GMY (05/11/2019)

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