



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.[MD]No.1034 of 2019

S.Nandhakumar : Appellant / Petitioner
Vs.

1.The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Bye Pass Road, Madurai - 16.

2.The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Virudhunagar Region,
Madurai Road Bye Pass,
Virudhunagar.

3.The Labour Officer,
C.13, Collectorate Complex,
Virudhunagar.

: Respondents / Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order dated 08.06.2017 made in W.P.[MD] No.8760 of 2017 on the file of this Court and allow this Writ Appeal.

Prayer in WP(MD) . 8790/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records pursuant to the impugned show cause notice of the 2nd respondent in his proceedings dated 28.04.2017 (received only on 02.05.2017) and quash the same, and pass such or other further order as this Honble Court.

For Appellant : Mr.S.Govindan
For Respondents 1&2 : Mr.J.Senthil Kumaraiah
Standing Counsel
For Respondent No.3 : Mr.A.K.Baskara Pandian
Special Government Pleader



JUDGMENT

[Judgment of the Court was delivered by **T.S.SIVAGNANAM, J.**]

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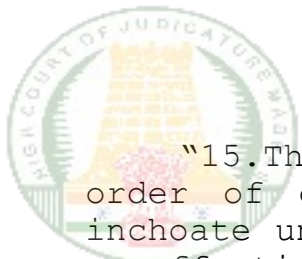
By consent of both parties, the Writ Appeal is taken up for final disposal at the admission stage itself.

2.Heard Mr.S.Govindan, learned Counsel for the appellant and Mr.Senthil Kumariah, learned Standing Counsel for the respondent Corporation and Mr.A.K.Baskara Pandian, learned Special Government Pleader for the Labour Officer.

3.This appeal has been filed challenging the order in W.P.[MD] No.8760 of 2017 dated 08.06.2017. The writ petition was filed by the appellant challenging the order of the Labour Officer, Virudhunagar, refusing to refer the dispute for adjudication to the Labour Court to test the correctness of the order of dismissal from service dated 13.09.2012. The departmental action initiated against the appellant for charge of unauthorised absence was decided ex-parte and ultimately, an order of dismissal was passed on 13.09.2012.

4.The respondent management was obliged to take approval from the competent authority in terms of Section 33(2)(b) of the Industrial Disputes Act, 1947. As there were pendency of proceedings in respect of an industrial dispute, the management filed petition seeking approval from the competent authority who granted approval on 05.12.2013. Within three years from the said date, the appellant had approached the Labour Officer. However, the Labour Officer rejected the request stating that the appellant has approached him after three years from the date of dismissal ie., 03.09.2012. It appears that the date has been wrongly given because the order of dismissal is dated 13.09.2012.

5.Be that as it may, the settled legal position is that reference is a Rule and refusal to refer is an exception. Admittedly, the Labour Officer cannot adjudicate the correctness of the order of dismissal. All that he can do is to record as to any settlement arrived at between the workmen or the management or upon failure to arrive at the settlement refer the matter. The reason assigned by the Labour Officer for rejection of the application for reference is not sustainable in law for more than one reason. Firstly, the dismissal order dated 13.09.2012 can take effect only from 05.12.2013, the date on which approval was granted by the competent authority under Section 33(2)(b) of the Act. This issue is settled and it will be beneficial to refer to the decision of the Hon'ble Supreme Court in the case of **S.Ganapathy and others Vs. Air India and another** reported in **AIR 1993 SC 2430**.



"15.Thus on principle and precept we go on to hold that when an order of discharge or dismissal of a workman is incomplete and inchoate until its approval is obtained from the Tribunal, there is no effective termination of the relationship of the employer and the employee. Not only in a limited way that the relationship is snapped factually and one month's wage is given to the employee to soften the rigour of his factual unemployment, but the content and hcharacter of the wage would extendidly tend to remain the same so far as subjection to statutory tax deduction is concerned, being remuneration paid as understood in S.2(rr) of the Act, on the supposition that the terms of employment, expressed or implied, were fulfilled and the same was due as wages payable to the workman in respect of his employment, or of work done in such employment, even though he was not put to work.

16.Thus as a result, we find no cause to interfere in the judgment and order of the High Court. Accordingly, we dismiss these appeals but leave the parties to bear their own costs."

6.Further more, there are several decisions of the Hon'ble Supreme Court and this Court, wherein it has been held that the challenge to an order of termination which was referred to the Labour Court for adjudication should not be turned down on the ground of delay. In this regard, reference was made to the decision of the Hon'ble Supreme Court in the case of **Gurmail Singh Vs. Principal, Government College of Education and others** reported in (2000) 9 SCC 496.

7.Thus, for the above reasons, we hold that the dispute raised by the petitioner should be referred to the Labour Court for adjudication. The writ appeal is allowed and the order passed in the writ petition is set aside and consequently, the order passed by the Labour Officer dated 07.11.2016 is quashed and there will be a direction to the Labour Officer, Virudhunagar, to refer the dispute for adjudication to the Labour Court, Madurai within a period of three [3] weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)



To

1. The Preceding Officer,
Labour Court,
Madurai.

2. The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Bye Pass Road, Madurai - 16.

3. The General Manager,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Virudhunagar Region,
Madurai Road Bye Pass,
Virudhunagar.

4. The Labour Officer,
C.13, Collectorate Complex,
Virudhunagar.

+1 CC to M/s.S.GOVINDAN, Advocate (SR-92090[F] dated 16/10/2019)

+1 CC to M/s.J.SENTHIL KUMARAI AH, Advocate (SR-93006[F] 18/10/2019)

Judgment made in
W.A.[MD]No.1034 of 2019
Dated: 16.10.2019

MR

SDS/06.01.2020/2P-7C