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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.13348 of 2017

Jebasingh ... Petitioner

-Vs-

State Express Transport Corporation
(Tamil Nadu) Limited,
Pallavan Salai, Chennai-2,
Represented by its Managing Director. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent herein to reinstate the petitioner with continuity of service with backwages and all other monetary and service benefits.

For Petitioner : Mr.V.Kannan
For Respondent : Mr.K.Sathiya Singh

ORDER

This Writ Petition is filed to direct the respondent herein to reinstate the petitioner with continuity of service, back wages and all other monetary and service benefits.

2.The learned counsel appearing for the petitioner contended that while conciliation proceedings were pending, the respondent, without obtaining approval under Section 33(2)(b) of the Industrial Disputes Act, from the Conciliation Officer, has dismissed the petitioner from service. Such dismissal is void, abusive and illegal. Therefore, the petitioner is deemed to be entitled for reinstatement, backwages and continuity of service.

3.The respondent filed counter affidavit. The learned counsel appearing for the respondent contended that the respondent has filed petition for approval before the Special Deputy Commissioner of Labour, Chennai, for approval of the order of dismissal. The said authority has returned the said application on the ground that 12(3) settlement was entered into on 13.04.2015 between various trade unions and Transport Corporations. The learned counsel appearing for the respondent further contended that on the date of dismissal of the petitioner, no proceedings were pending before the conciliation officer or any Court. This Writ

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Petition, in such circumstances, is not maintainable and prayed for dismissal of the Writ Petition.

4.Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent and perused the materials available on record carefully.

5.From the averments made in the affidavit, it is seen that the petitioner has stated that conciliation proceedings were pending. While conciliation proceedings were pending, the respondent has dismissed the petitioner from service, without paying one month salary and failed to obtain approval for the dismissal of the petitioner. However, the petitioner has not furnished any details about the conciliation proceedings alleged to be pending. On the other hand, the respondent has stated that the settlement under Section 12(3) of the Industrial Disputes Act, was entered into on 13.04.2015 between various trade unions and Transport Corporations and the application filed by the respondent for approval was returned, as no conciliation proceedings were pending at the time of dismissal. The petitioner has not filed any reply affidavit, denying the said contention of the respondent. The petitioner is raising various grounds for the relief sought for, including the fairness of domestic enquiry conducted by the respondent. The issue of whether domestic enquiry conducted by the respondent was fair and proper can be decided only by appreciating the evidence let in before the Labour Court. Even if the Labour Court comes to the conclusion that domestic enquiry is not fair and proper, the respondent has right to let in evidence to prove the charge, if the respondent has reserved the said right in the counter statement. The disputed question of fact cannot be decided in a Writ proceedings. Further, the petitioner has failed to prove the pendency of the conciliation proceedings and hence, the Writ Petition is not maintainable and liable to be dismissed, as devoid of merits. Therefore, this Writ Petition is dismissed. However, it is open to the petitioner to raise the disputes with regard to his non-employment before the competent forum. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Myr

To

The Managing Director.
State Express Transport Corporation
(Tamil Nadu) Limited,
Pallavan Salai, Chennai-2.

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+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-91288[F] dated 04/10/2019)

+1 CC to M/s.V.KANNAN, Advocate (SR-91453[F] dated 04/10/2019)

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