



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2019
(Reserved on 27.09.2018)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.8096 to 8099 of 2011

V.Santhanam	... Petitioner in W.P.8096/11
M.Subramanian	... Petitioner in W.P.8097/11
P.Thirumoorthy	... Petitioner in W.P.8098/11
R.Rajendran	... Petitioner in W.P.8099/11

vs.

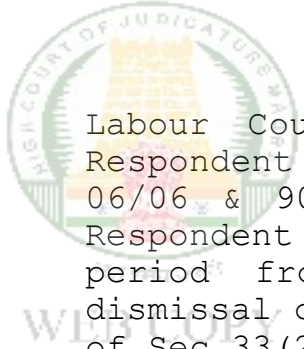
1)The Presiding Officer,
Labour Court,Madurai.

2)The Management of
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Virudhunagar Region,
Rep. by it's General Manager,
Virudhunagar. ... Respondents in all WPs

Prayer in W.P.8096/11 : Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, after calling for the records from the 1st Respondent Labour Court relating to the impugned common order of the 1st Respondent dated 29-07-2010 in C.P.Nos.113/02, 57/03, 30/04, 04/05, 07/06 & 91/06, quash the same and consequently to direct the 2nd Respondent to pay wages Rs.5,89,513/- to the Petitioner for the period from 01.03.2002 to 31.08.2006 after holding that the dismissal of his services by an order dated 18-03-2002 was violative of Sec.33(2) (b) of I.D.Act 1947, illegal, non-est and void abintio.

Prayer in W.P.8097/11 : Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, after calling for the records from the 1st Respondent Labour Court relating to the impugned common order of the 1st Respondent dated 29-07-2010 in C.P.Nos.64/2003, 4/06 and 88/06, quash the same and consequently to direct the 2nd Respondent to pay wages Rs.3,96,900/- to the Petitioner for the period from 25.03.02 to 31.08.06 after holding that the dismissal of his services by an order dated 23-03-2002 was violative of Sec.33(2) (b) of I.D.Act 1947, illegal, non-est and void abintio.

Prayer in W.P.8098/11 : Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, after calling for the records from the 1st Respondent



Labour Court relating to the impugned common order of the 1st Respondent dated 29-07-2010 in C.P.Nos.114/02, 65/03, 29/04, 2/05, 06/06 & 90/06 quash the same and consequently to direct the 2nd Respondent to pay wages Rs.4,65,768.50ps to the Petitioner for the period from 01-06-2002 to 31-08-2006 after holding that the dismissal of his services by an order dated 01-06-2002 was violative of Sec.33(2) (b) of I.D.Act 1947, illegal, non-est and void abintio.

Prayer in W.P.8099/11 : Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, after calling for the records from the 1st Respondent Labour Court relating to the impugned common order of the 1st Respondent dated 29-07-2010 in C.P.Nos.56/03, 51/04, 3/05, 5/06 and 89/06 quash the same and consequently to direct the 2nd Respondent to pay wages Rs.5,38,849/- to the Petitioner for the period from 20.07.02 to 31.08.06 after holding that the dismissal of his services by an order dated 23-03-2002 was violative of Sec.33 (2) (b) of I.D.Act 1947, illegal, non-est and void abintio.

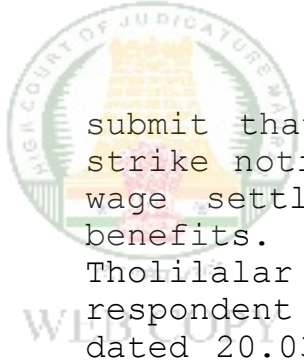
For Petitioners : Mr.S.Arunachalam
 For R2 : Mr.A.Jeyaram
 For R1` : Labour Court

COMMON ORDER

1. This batch of Writ Petitions seek to quash the common order dated 29.07.2010 passed by the Labour Court confirming the dismissal orders served on the petitioners by the second respondent during 2002 on the ground of violation of Section 33 (2) (b) of the Industrial Dispute Act, 1947 and sought consequential relief in terms of the decision of the Constitutional Bench of the Hon'ble Supreme Court reported in 2002 (1) LLN page 639.

2. The petitioners were working as permanent employees of the Tamil Nadu State Transport Corporation (Madurai) Limited. They were members of the trade union by name, Arasu Pokkuvaratthu Tholilalalar Sangam, Virudunagar, with Trade Union Registration No.253/VDR. The petitioners state that it has been a practice that from the inception, all the State Transport Corporation owned by the Government of Tamil Nadu had been entering into a settlement under Section 12 (3) of I.D Act, 1947 only with the federation of trade unions and that the State Transport Employees Federation had also signed various wage settlements under Section 12 (3) of I.D Act, 1947 with all the Transport Corporations owned by the State of Tamil Nadu including the second respondent corporation. A federation of Trade union is also averred as a trade union as per Section 2 (h) of the Trade Unions Act, 1926.

3. The petitioners were served with dismissal orders by the second respondent Transport Corporation after domestic enquiry on various charges particularly of absenting from duty. The petitioners

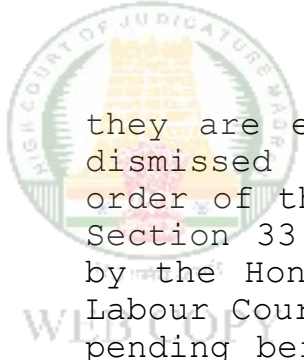


submit that the State Transport Employees Federation had issued a strike notice on 18.03.2002 raising certain demands relating to new wage settlement, payment of bonus, ex-gratia and other service benefits. The petitioners' union namely, Arasu Pokkuvarathu Tholilalar Sangam, Virudhunagar which is functioning in the second respondent Transport Corporation had also issued a strike notice dated 20.03.2002 to the second respondent raising the same demands against the second respondent. In response to the Strike Notice of the Federation, the Commissioner of Labour, Chennai, initiated the conciliation proceedings, as the transport industry is a public utility service as per Section 2 (n) of I.D.Act, 1947. Similarly and simultaneously, it was averred that the Labour officer at Virudhunagar had also initiated conciliation proceedings and issued notice dated 20.03.2002 calling the parties to attend the conciliation talks.

4. The petitioners submit that the conciliation proceedings was conducted by the Labour Officer Chennai at state level by inviting all the federations to conciliation talks and the Conciliation proceedings by the Labour officer at Virudhunagar was also taken over by the Commissioner of Labour, Chennai, since the dispute relating to the demands in both conciliation proceedings is one and the same. The petitioners submit that since the conciliation proceedings commenced before the authorities in response to the strike notice of the federation and the Union, the second respondent ought to have filed approval petition seeking approval of the dismissal orders of the petitioners in terms of Section 33 (2) (b) of the Industrial Dispute Act, 1947 either from the Commissioner of Labour or the Labour Officer, Virudhunagar, before whom, the conciliation proceedings is pending as the petitioners are concerned workmen in the dispute as they would be benefitted if the demands raised in the disputes are accepted.

5. The petitioners submit that the management of all State Transport Corporations including the second respondent had filed hundreds of approval petitions under Section 33 (2) (b) of the I.D.Act, 1947, before the Commissioner of Labour seeking approval for the orders terminating the services of the workers that were passed when the same conciliatory proceedings were pending. They submit that finally on 31.08.2005 a settlement under Section 12 (3) of the I.D.Act, 1947 was arrived at by the trade union federation and the managements of all the state transport corporations including the second respondent, before the Commissioner of Labour at Chennai and thus the above said conciliation proceedings came to an end by settlement.

6. The petitioners aver that the non compliance of Section 33 (2) (b) of I.D.Act, 1947 in their cases render the dismissal order not only illegal, but also void abinitio and non est in the eye of law. They relied on the decision of the Constitution Bench of the Hon'ble Supreme Court in **Zila Sahakari Bhoomi Vikas Bank Ltd., vs. Ram Gopal Sharma** reported in 2002 (1) LLN page 639. They state that

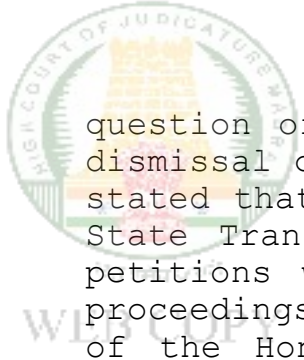


they are entitled to get all the benefits as if they were never dismissed from service. The petitioners submit that the impugned order of the first respondent holding that there is no violation of Section 33 (2) (b) of I.D.Act, 1947, is opposed to the law settled by the Hon'ble Supreme Court cited supra. They contended that the Labour Court failed to see that there was a conciliation proceedings pending before the Commissioner of Labour with regard to a dispute relating to demands of increase of wages, bonus and other benefits of workmen employed in all the Transport corporations owned by the Government of Tamil Nadu including the second respondent and that the pendency of the conciliation proceedings was not disputed by the second respondents.

7. The petitioners submit that the 1st respondent Labour Court ought to have framed and decided the correct issues which arose in their cases viz "whether there was a conciliation proceedings pending at the time of the dismissal of the petitioners and the date when the conciliation proceedings actually commenced" instead of the faulty question "whether a conciliation proceedings could be said to have legally commenced, when the strike notice given by the Union to the Conciliation officer at Virudhunagar was defective" and wrongly relying on the decision of the Hon'ble Supreme Court reported in **2008 (2) LLN page 761 Oriental Insurance Co. Ltd., vs. Tamil Nadu Labour Welfare Board.**

8. The respondents submit that the strike notice dated 20.03.2002 issued by the Union does not comply with Rule 59 (2) (b) (i) of the Tamil Nadu Industrial Disputes Rules and therefore, the same is not valid strike notice and therefore, the question of commencement of conciliation proceedings against the said strike notice does not arise. They submit that they are not aware of the membership of the petitioners in the union and therefore they do not admit the membership of the petitioners in the Union. They further submit that no Industrial Dispute within the meaning of Section 2 (k) of the I.D.Act, 1947, was raised by the trade union before the Commissioner of Labour. So, the petitioners are not workmen concerned in any Industrial Dispute before the Commissioner of Labour, Chennai. The respondents would further submit that the strike notice given by the Federation is not a valid notice since the 14 days notice of commencement of strike was not mentioned in the notice given by the Federation. Also, the failure report was not submitted within 14 days of the commencement of conciliation proceedings by the Commissioner of Labour and that the proceedings can be extended only with the consent of all the parties to the dispute. Therefore, they claim that the proceedings before the Commissioner of Labour is at best a negotiation and not conciliation.

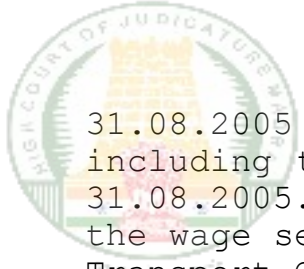
9. The respondents also pleaded that no notice of conciliation was issued to them by the Commissioner of Labour till the date of dismissals and therefore, they are not aware of any conciliation proceedings pending before the Labour Commissioner. Regarding the



question of the respondents filing approval petition in respect of dismissal of one of the employees during the period, the respondents stated that it was done in compliance of the communication from the State Transport Department dated 11.11.2002 and that the approval petitions were filed with an objection that no valid conciliation proceedings was pending. The respondents contend that the decision of the Hon'ble Supreme Court reported in 2008 (2) LLN page 761 covers the points raised by the petitioners before the first respondent. Without prejudice, they had also disputed the quantum of backwages sought by the petitioners as they allege that the same are not validly determined.

10. Heard the counsels from both sides. Perused the records. The petitioners are members of registered Trade Union. The Trade Union is part of the Federation that issued strike notice on 18.03.2002. The Trade Union of the petitioners had also issued a strike notice to the second respondent on 20.03.2002. The issues raised in both the demands are one and the same. The conciliation proceedings were initiated before the Commissioner of Labour against the strike notice of the Federation and before the Labour Officer, Virudhunagar, against the strike notice issued by the Trade Union where the petitioners are members. A settlement was finally arrived at between the Federation and the State Transport Corporations including the Second Respondent on 31.08.2005 under Section 12 (3) of the Industrial Disputes Act, 1947. The above proposition that the dispute with reference No C1/18591/2002 commenced on 20.03.2002 and closed on 08.09.2005 is confirmed by the RTI reply of the Office of the Commissioner of Labour, Chennai and available on records. The petitioners are issued with dismissal orders in the intervening time. And for the orders of dismissal, no approval petition was filed under Section 33 (2) (b) of the Industrial Dispute Act, 1947. The above proposition is not disputed.

11. The petitioners contend that the order of dismissal is illegal, abinitio void and non est in the eyes of law as the approval petition was not filed under Section 33 (2) (b) of the Industrial Dispute Act, 1947 and therefore, adjudication under Sec 2 (A) or Section 33 (A) of the ID Act, 1947 is not required. In support of their contention, they had relied on the decision of the Constitution Bench of the Hon'ble Supreme Court reported in 2002 (1) LLN page 639. In their view, the first respondent Labour Court framed and decided the wrong question and the actual question that ought to have been decided is whether the circumstances of dismissal required approval under Section 33(2)(b) of the Industrial Dispute Act, 1947. To resolve the question of the existence of the circumstances, the question that has to be decided is as to whether the conciliation proceedings was pending at the time of the dismissal orders. The petitioners had demonstrated that the conciliatory proceedings was pending in as much as Strike Notices were issued by the Federation on 18.03.2002 and the Trade Union on 20.03.2002 and the conciliation meeting was called for by the conciliation authorities and the final settlement was arrived on

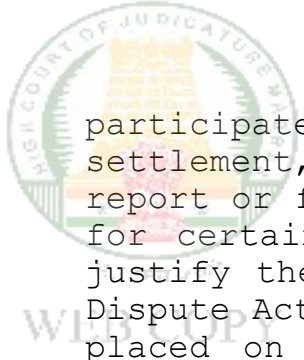


31.08.2005 and the Federation and the Transport Corporations including the Second Respondent are parties to the settlement dated 31.08.2005. They submitted that it is a convention and practice that the wage settlements are usually done between the Federation and the Transport Corporations of Tamil Nadu jointly and not severally. They had also relied on Section 2 (h) of the Industrial Disputes Act, 1947 to attach legitimacy to such conventions. They had also pointed out to the fact of the second respondent having filed approval petition in respect of one of their colleagues for the same reasons that came to be rejected.

12. The respondents had resisted the arguments of the petitioners on the ground that only the trade union can issue strike notice under Rule 59 (1) of the Tamil Nadu Industrial Disputes Rules and that Federation cannot issue strike notice. According to them, though they had received the strike notice issued by the federation on 20.03.2002, the same did not mention the prescribed 14 days time and therefore was invalid. In view of the discrepancies highlighted by them, they contend that the proceeding cannot be called conciliation proceeding and at best, it can be called negotiation. They submit that the conciliation failure report that has to be sent within 14 days by the Labour Commissioner and conciliation proceedings can be extended beyond the prescribed 14 days only with the consent of the parties and therefore, even if the conciliation proceedings started, the same did not continue as their consent was not sought or received. They had also argued that since notice of conciliation was not served on them by the Commissioner of Labour, till the dismissal orders were passed, they are unaware of the conciliation proceedings before the Commissioner of Labour. Therefore, they argued, there was no violation of Section 33 (2) (b) of the Industrial Dispute Act, 1947.

13. The moot question that arose in this case is whether any conciliation proceeding was pending at the time of issue of dismissal orders by the Second Respondent. Once this question is answered in the affirmative, then it naturally follows that the approval petition under Section 33 (2) (b) of the Industrial Dispute Act, 1947 is mandatory. And if the approval petition is not filed following the dismissal orders, then the orders of dismissal are legally invalid, non est and abinitio void and the decision of the constitutional bench of the Hon'ble Supreme Court will squarely apply and the employee will be entitled to backwages. On perusal of the records and hearing the counsels and as discussed supra, the petitioners have adequately demonstrated that the Strike Notice was served during 18-20/03.2002, conciliation meetings happened and settlement arrived on 31.08.2005 and the second respondent is party to the settlement. The respondents had no occasion to deny the above facts that are relevant to the substantive question in the case.

14. The defence of the respondents bordered in mere procedural technicalities that will have no relevance once the proceedings is completed and settlement arrived. For instance, after having



participated in the conciliation proceedings and being party to the settlement, they have no occasion to complain non filing of failure report or failure to obtain consent. Having filed approval petitions for certain employees over the same period, they have no case to justify the non compliance of Section 33 (2) (b) of the Industrial Dispute Act, 1947 in respect of the petitioners. The petitioners had placed on record through documents the cogent nexus between the Notice of Strike dated 18.03.2002 and the settlement of Industrial Dispute dated 31.08.2005. Once this pendency of dispute is established, the workmen will be entitled to the protection contemplated under Section 33 (2) (b) of the Industrial Dispute Act, 1947.

15. The question whether approval petition under Section 33 (2) (b) of the Industrial Dispute Act, 1947 is mandatory or not for orders of dismissal pending Industrial Dispute has become a matter res judicata in view of the decision of the Hon'ble Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Limited vs Ram Gopal Sharma and others reported in 2002 (2) SCC 244. In times of Industrial Disputes, advertorial actions of the employers against the employees can not be allowed with impunity and the protection provided to the workmen under Section 33 (2) (b) of the Industrial Dispute Act, 1947 is sacrosanct and mandatory. If the employer fails to file the approval petition under Section 33 (2) (b) of the Industrial Dispute Act, 1947 for the advertorial actions taken by them against the employees during the currency of the conciliation proceedings/pendency of dispute or fails to succeed in the petition before the Tribunal, the orders of dismissal is abinitio void and non est in the eyes of law.

16. In view of the above, when this Court decided to hold that the dismissal orders of the second respondent against the petitioners are violative of Section 33 (2) (b) of the Industrial Dispute Act, 1947 and therefore illegal, non-est and abinitio void and the common order dated 29.07.2010 passed by the Labour Court in the cases of the petitioners are liable to be set aside, posted the case for clarification as to the back wages as there was no specific pleading that the petitioners were not gainfully employed elsewhere. The learned Advocate General appeared for the second respondents and expressed his concern about the financial crisis undergone by the Transport Corporation and the hefty pay out on account of back wages for the period of no work and sought time to work on an amicable settlement by mutual consent with the Writ Petitioners and the case was adjourned to 05.04.2019.

17. Today, when the matter was taken up for hearing, the learned counsel for the petitioners as well as the respondents filed a joint compromise memo signed by the petitioners as well as the respondents counter-signed by their respective counsels, stating that they have mutually arrived at a settlement among themselves. As per the Memo dated 05.04.2019, the following terms and conditions were mutually arrived between the petitioners and the respondent.



1. Reinstatement with Continuity of Service

2. Rs. 4,00,000/- (Rupees four lakhs only) wages for non employment period will be paid.

3. 50% period of non employment will be taken as qualifying service for Pension, Gratuity and other Service Benefits.

4. For non-employment period, only wage settlement benefit and Service weightage increment will be paid.

5. No yearly increment, Service Review Benefits and leave Benefits will be paid for the non employment period.

18. Recording the above settlement dated 05.04.2019, the Writ Petition is disposed of on the above terms. The settlement shall be followed scrupulously. In view of the above settlement, the respondents are directed to reinstate the petitioner within a period of two weeks from the date of receipt of a copy of this order. It is needless to state that the respondents shall enforce the settlement in the spirit of goodwill. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar()

To

Encl: Xerox copy of Settlement Memo dated 05.04.2019

1) The Presiding Officer,
Labour Court, Madurai.

2) The General Manager,
The Management of Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Virudhunagar Region, Virudhunagar.

+1. C.C. To Mr.S.Arunachalam Advocate SR.No.60957

Pre-Delivery common order made in
W.P(MD) Nos.8096 to 8099 of 2011
12.04.2019