

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.10.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 4710 of 2019
and
W.M.P. Nos. 5341 and 5342 of 2019

The Management of State,
Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Cuddalore Region,
Cuddalore - 607 002.

... Petitioner

-vs-

1. G.Raghu

2. The Special Deputy Commissioner of Labour,
Chennai - 600 006. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the Second Respondent in A.P. No. 242/2014 dated 09.04.2018 and quash the same.

For Petitioner : Mr. C.S.K.Sathish, Standing Counsel

For Respondents: Mr. A.V.Arun (for R1)

Mr. D.Sathyaraj,
Special Government Pleader (for R2)

O R D E R
(through video conference)

Heard Mr. C.S.K.Sathish, Learned Standing Counsel appearing for the Petitioner, Mr. A.V.Arun, Learned Counsel for the First Respondent and Mr. D.Sathyaraj, Learned Government Pleader appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The First Respondent, who had been employed as driver in the establishment of the Petitioner, was terminated from service by Order in K.K.No. 1532/D3/TNSTC/K.M./2014 dated 08.09.2014 on the charge that he did not possess the requisite educational qualification of having studied upto Standard VIII for appointment to that post. Since conciliation proceedings

relating to an industrial dispute between the Petitioner and the Trade Union in which the First Respondent was a member was then pending before the Second Respondent, the Petitioner had made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short) for approval of termination, but it was rejected by order dated 09.04.2018 in A.P. No. 242 of 2014. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. At the outset, it must be pointed out that 'misconduct' relates to an act or omission done by the employee after his appointment in service. In the instant case, the charge against the First Respondent relates to production of a bogus certificate in support of his claim that he possess the required educational qualification of having studied upto Standard VIII for appointment as driver in the establishment of the Petitioner. Viewed from that perspective, the termination from service of the First Respondent was actually cancellation of his illegal appointment, which cannot be construed as 'misconduct'. Inasmuch as Section 33(2)(b) of the Act contemplates approval of the concerned authority only when the termination arises out of a misconduct committed by an employee, it cannot have any application in this case. In other words, the application submitted by the Petitioner for approval of the termination of the First Respondent, which had not arisen out of any 'misconduct', was itself unnecessary and the consequential refusal of approval by the Second Respondent cannot invalidate that termination from service. This would imply that the impugned order does not in any manner confer any right in favour of the First Respondent for reinstatement in service and other monetary benefits.

4. This view taken is fortified by the decision of the Division Bench of the Karnataka High Court in P.Jai Singh -vs- BMTC, Central Office, Bangalore (Order dated 05.12.2014 in W.A. No. 6377 of 2013), where it has been held as follows:-

"12. Having heard the learned counsel for the parties, the only question to be considered in this appeal is:

"Whether Section-33(2)(b) can be invoked by the appellant when the workman has secured appointment by producing a fake certificate and; whether production of fake certificate and securing appointment amounts to misconduct during the course of the employment under the respondent?"

13. Section-33(2)(b) of the I.D. Act, 1947 reads as hereunder:

“(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute (or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman)-

(a) XXXXXX

(b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman;”

14. As rightly pointed out by the learned counsel for the appellant, this bench in Writ Appeal No. 5738/2012 held that before dismissing an employee for a misconduct, permission under Section-33(2)(b) of the I.D. Act is required. But in the instant case, the question is whether the act of production of fake certificate to secure an appointment has to be considered as a misconduct after becoming the workman of the respondent. So far as this point is concerned, it is an undisputed fact that the appellant herein has not committed any misconduct after he became a workman of the respondent. The allegation in this case is that fraud is played by the appellant in order to secure an appointment. In such circumstances, we are of the view that Section-33(2)(b) of the Act has no application and we cannot find fault in the order of the learned Single Judge in allowing the writ petition of the respondent.

15. The object of the Act is for settlement of industrial disputes, to protect the employees from exploitation by the employer and issues of identical nature. But when a person has deliberately submitted a false certificate with an intention to mislead, such a person cannot seek protection under the Act. The Act is meant for honest employees for the purposes as narrated therein. It is not intended for those persons who knowingly and intentionally mislead and cheat the employer. The benefit of the statute therefore cannot be extended to such class of workmen who indulge in fraud, misrepresentation, etc., As the admitted facts

would show, a false certificate was submitted knowing it to be false. It was submitted with an intention to mislead and to gain an advantage out of it. Therefore, we are of the considered view that the contentions being advanced with regard to the applicability of certain provisions of the Act, would not come to the aid of the appellant herein in view of the fraud committed by him. The protection of the Act is not intended for a workman of this nature. Moreover the act of the employee amounts to an offence, under Section 198 of IPC of using as true a certificate knowing the same to be false. Hence on these grounds also, no interference is called for."

5. Be that as it may, the First Respondent has filed another Writ Petition in W.P. No. 26435 of 2014 challenging the order of termination dated 08.09.2014 passed by the Petitioner, which has been disposed by this Court in a separate order dated 01.10.2020, and its outcome would govern the rights of the respective parties.

Accordingly, the Writ Petition is disposed with the aforesaid clarifications. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

vjt
To

1. The General Manager,
Tamil Nadu State Transport Corporation (Villupuram) Limited,
Cuddalore Region,
Cuddalore - 607 002.
2. The Special Deputy Commissioner of Labour,
Chennai - 600 006.

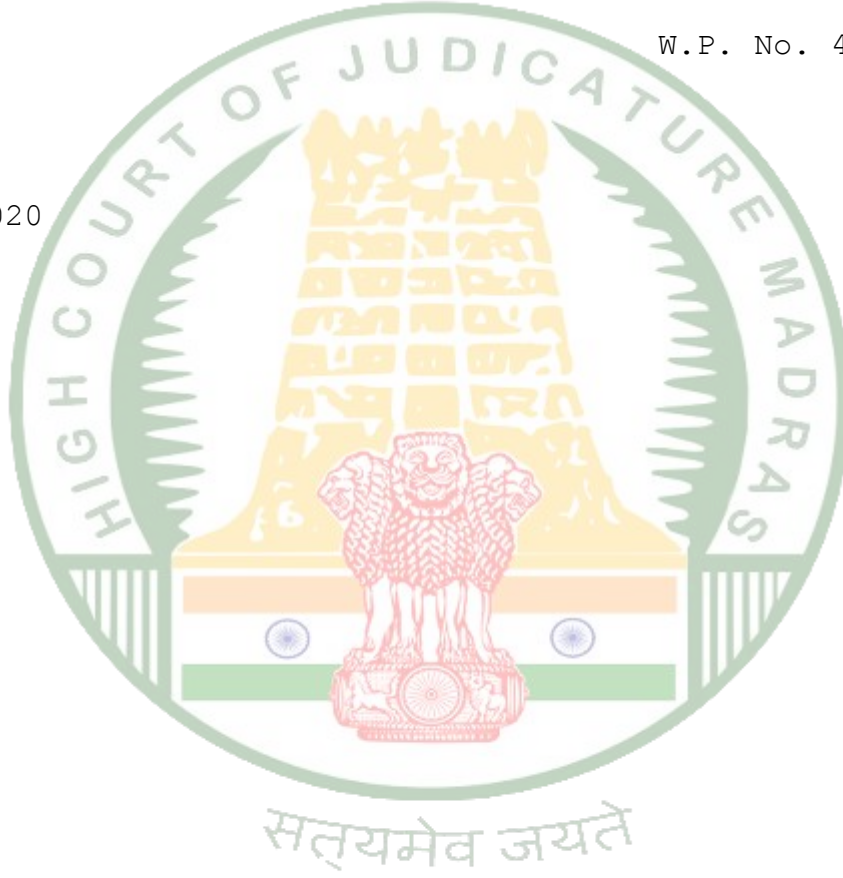
Copy to

G.Raghu,
S/o. C.Govindhan,
No. 13/6, Manalur Road,
Ramachandran Pettai,
Virudhachalam.

+1 cc to Mr.A.V.Arun Advocate sr32527

W.P. No. 4710 of 2019

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