

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 8918 of 2019
and
W.M.P. No. 9474 of 2019

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Kancheepuram Division,
Ponnerikarai,
Chennai - Bangalore National High Road,
Kancheepuram - 631 552. Petitioner

-vs-

1. The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai - 600 006.
2. K. Namachivayam Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the order dated 10.01.2018 made in A.P. No. 3 of 2012 on the file of the Special Deputy Commissioner of Labour, Chennai.

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

For Respondents: Mr. D. Sathyaraj,
Special Government Pleader (for R1)
Mr. N.Ishak (for R2)

ORDER
(through video conference)

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

2. The Second Respondent, who was employed as conductor, had been terminated from service by the Petitioner by order dated 28.12.2011 on the charge of misappropriation of funds collected for bus tickets issued to passengers. Since conciliation proceedings relating to an industrial dispute between the Petitioner and the Trade Union in which the Second Respondent was a member was then pending before the First 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 the termination, but it was rejected by order dated 10.01.2018 in A.P. No. 3 of 2012 passed by the First Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. It is evident from the impugned order that the First Respondent has examined the application for approval made by the Petitioner with reference to the relevant aspects stipulated in the decision of the Hon'ble Supreme Court of India in Lalla Ram -vs- D.C.M. Chemical Works Ltd. [(1978) 3 SCC 1], which are as follows:-

- (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;
- (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;
- (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;
- (iv) whether the employer has paid or offered to pay wages for one month to the employee; and
- (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

4. The First Respondent came to the conclusion that the requirement in items (i), (ii), (iii) and (v) had been satisfied and in respect of the aspects in item (iv), it was held that there has been deficit in the one month wages paid to the Second Respondent. It has been held by this Court in Mangalam of Metropolitan Transport Corporation (Chennai) Ltd. -vs- A.Ramesh Babu (Order dated 03.02.2016 in W.P. Nos. 33497 to 33505 of

2015) that if the employer has undertaken to pay the difference in one month wages that may arise in the approval petition under Section 33(2)(b) of the Industrial Disputes Act, 1947, and if there is any calculation mistake or any other error, it would not vitiate the termination when the employer makes good the deficit payable.

5. Learned Counsel for the Second Respondent also resisted the Writ Petition by contending that though the impugned order has been passed on 10.01.2018, the Writ Petition has been filed only on 28.02.2019 and in the meanwhile, this Court by an order dated 14.08.2018 in W.P. No. 20980 of 2018 filed by the Second Respondent, has directed the terminal benefits arising out of the impugned order to be paid to him.

6. After considering the said objection, this Court in the order passed on 21.09.2020 had imposed costs of Rs.10,000/- for the belated filing of the Writ Petition, which was required to be paid by the Petitioner to the Second Respondent along with a sum of Rs.756/- towards difference in wages, totalling Rs.10,756/- and file proof of such compliance before this Court. It is informed today by the Learned Counsel for the Petitioner that the said sum of Rs.10,756/- by way of Demand Draft No. 703790 dated 28.09.2020 has been sent by Registered Post on 30.09.2020 and a copy of the postal receipt has been produced in proof of the same, which has been placed on record.

7. Having due regard to the fact that the Petitioner has made the required undertaking to pay difference in wages in the approval petition and the shortfall in one month wages has also been paid by the Petitioner, and the Second Respondent has been compensated with costs of Rs.10,000/- for the delayed filing of the Writ Petition, there does not appear to be any impediment for approving the termination order. In that view of the matter, the impugned order dated 10.01.2018 in A.P. No. 3 of 2012 is set aside and it shall be treated that the First Respondent has granted approval under Section 33(2)(b) of the Act to the Petitioner for the termination of the Second Respondent. Though obvious, it is made clear that no view has been expressed by this Court on the correctness or otherwise of the merits of the rival contentions of the parties on the termination of the Second Respondent from service and that the Second Respondent is not precluded from working out his remedies to impeach the order of termination before the proper forum in the manner recognized by law (including resort to complaint under Section 33-A of the Act, if available), and that the period from the date of termination till today shall be excluded for the purpose of computation of limitation in that regard.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

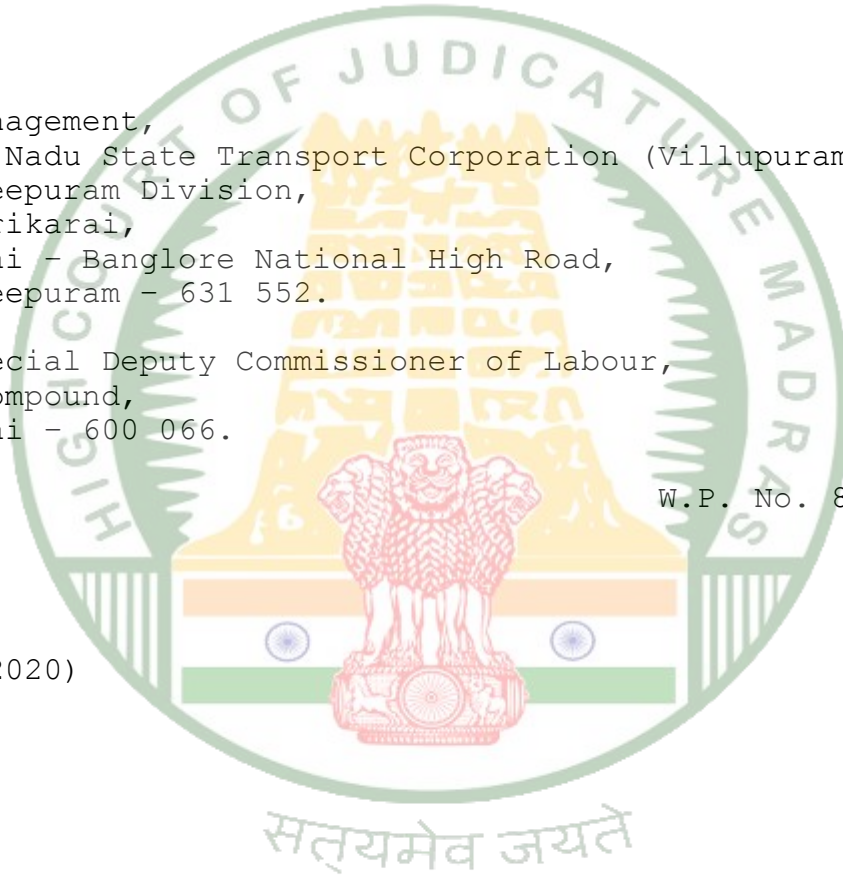
Maya/vjt

To

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Kancheepuram - 631 552.
2. The Special Deputy Commissioner of Labour,
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