



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2020

CORAM

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

W.P.NO.13824 OF 2019

AND

W.M.P.NOS.13903 AND 20554 OF 2019

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Limited,
Cuddalore Zone,
Cuddalore - 607 002. ... Petitioner

-vs-

1. S.Shanmugam
2. The Special Deputy Commissioner of Labour,
Chennai. ... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 31.01.2018 passed in A.P. No. 30 of 2015 on the file of the Second Respondent herein and quash the same as being illegal, arbitrary and unconstitutional and consequently direct the Second Respondent herein to approve the order of the Petitioner dated 12.01.2015 removing the First Respondent herein from service.

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

For Respondents: Mr.N.Sundaramurthy (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.N.Sundaramurthy, Learned Counsel for the First Respondent and Mr.D.Sathyaraj, Learned Special 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 was employed as conductor, had been terminated from service by the Petitioner by Order in Ka. Ku. No. 390/ D1/TNSTC/KM/2014 dated 12.01.2015 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 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 31.01.2018 in A.P. No. 30 of 2015 passed by the Second Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. It is evident from the impugned order that the Second 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 Second 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 Management 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. In the order passed on 22.09.2020, this Court had required the Petitioner to pay a sum of Rs.1,012/- to the First Respondent towards difference in one month wages 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.1,012/- by way of Demand Draft No. 829512 dated 23.09.2020 has been sent by Registered Post on 24.09.2020 and produced postal track consignment showing proof of having delivered the same and he has filed a memo dated 28.09.2020 to that effect, which has been placed on record.

6. 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 been paid by the Petitioner, there does not appear to be any impediment for approving the termination order. In that view of the matter, the impugned order dated 31.01.2018 in A.P. No. 30 of 2015 is set aside and it shall be treated that the Second Respondent has granted approval under Section 33(2)(b) of the Act to the Petitioner for the termination of the First 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 First Respondent from service and that the First 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 Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vjt/kv



To

1. The General Manager,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Cuddalore Zone,
Cuddalore-607002.

2. The Special Deputy Commissioner of Labour,
Chennai.

W.P.No.13824 of 2019

JP (CO)
CS/02/11/2020