

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2020

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THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.42465 of 2016
and
WMP No.36355 of 2016

The Management,
Tamilnadu State Transport Corporation
(Kumbakonam Division), Limited,
27, Railway Station New Road,
Kumbakonam 612 001.Petitioner

Vs.

1.A.Kannan
2.The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai.Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari to call for the records of the order passed by the second respondent in Approval Petition in A.P.No.62/2011 dated 04.04.2016 and to quash the same as illegal.

For Petitioner : Mr.D.Venkatachalam

For Respondent : R1-No Appearance
Mr.K.Magesh for R2
Special Government Pleader

ORDER

The Tamilnadu State Corporation (Kumbakonam Division) is the writ petitioner. The challenge made is against the order of the second respondent dated 04.04.2016, refusing to grant approval of the dismissal of the first respondent, under Section 33(2)(b) of the Industrial Disputes Act, 1947.

2. In this writ petition, though notice was issued and served on the first respondent/workman, he has not chosen to appear either in person or through counsel. His name is printed in the cause list.

3. The case of the petitioner is as follows:

The first respondent was appointed as a Driver in the petitioner Corporation. The first respondent absented himself unauthorisedly and failed to report duty without any sanction from the Management for the period from May 2009 till August 2009. Charge memo was issued against him. He failed to submit any reply to the charges. An Enquiry Officer was appointed. The first respondent did not participate in the enquiry. The Enquiry Officer set the first respondent exparte and filed a report. Thereafter, two notices were issued to the first respondent on 17.06.2010 and 22.11.2010 seeking for the response to the Enquiry Officer's report. There was no response from the first respondent. Hence, the petitioner Management dismissed the first respondent from service on 14.02.2011. Since an industrial dispute was pending before the second respondent, the petitioner Corporation filed a petition under Section 33(2) (b) of the Industrial Disputes Act, seeking for approval of the dismissal of the first respondent. In compliance of the procedures contemplated under Section 33(2)(b), the petitioner paid one month salary of Rs.16,726/- to the first respondent. The second respondent, however refused to grant approval only on the ground that one month salary was not paid in full to the first respondent. Hence, the present writ petition.

4. No counter affidavit is filed by the second respondent. The contesting first respondent is also not appearing before this Court even after notice. Thus, this Court is left with no other option except to hear and decide the matter based on the materials available on record and the submissions made by the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the second respondent.

5. It is submitted by the learned counsel for the petitioner that the first respondent was dismissed from service on 14.02.2011 and as on that date, Rs.16,726/- is the one month salary payable to the first respondent, which the petitioner Management has paid as is evident from Ex.P7. He further submitted that the claim of the first respondent was based on G.O.No.98 dated 28.03.2011, increasing Dearness Allowance from 45% to 51% with effect from 01.01.2011 and therefore, such benefit granted with retrospective effect cannot be cited as a ground to say that the petitioner Management did not pay the one month salary as on 14.02.2011. He further submitted that the second respondent found all other issues in favour of the

Management and therefore, the finding rendered regarding the payment of one month salary is factually erroneous and unsustainable.

6. Learned Special Government Pleader appearing for the second respondent reiterated the contentions raised and the findings rendered in the impugned order. However, he is not disputing the fact that the G.O.No.98 was passed on 28.03.2011, giving retrospective effect from 01.01.2011.

7. Heard both sides.

8. The first respondent was working as a Driver at the petitioner Corporation. He absented himself unauthorisedly from May 2009 till August 2009. Pursuant to the issuance of the charge memo and conducting an enquiry, the Management passed an order of dismissal. It is stated that the first respondent did not reply to the charges nor participated in the enquiry. It is also stated that subsequent to the report filed by the Enquiry Officer, though two notices were issued to the first respondent, he has not chosen to respond to the same. Under such circumstances, he was dismissed from service.

9. An Approval Petition filed under Section 33(2) (b) before the second respondent was rejected through the impugned order only on the ground that the petitioner Management did not pay the one month salary in full as required under Section 33(2) (b). Admittedly, all other issues are found in favour of the Management. The second respondent has chosen to conclude as if the Management has not paid one month salary based on the claim made by the first respondent on G.O.No.98 dated 28.03.2011. It is stated that under the said G.O., Dearness Allowance was increased from 45% to 51% with effect from 01.01.2011. Therefore, it is evident that as on the date of dismissal viz., 14.02.2011, the G.O.No.98 did not come into existence. No doubt, the said G.O. gave the benefit of Dearness Allowance with retrospective effect from 01.01.2011. At the same time, what is to be seen, is as to whether on the date of dismissal, what was the monthly salary payable and whether such salary was paid to the employee or not.

10. As it is seen that as on the date of dismissal, the salary payable to the first respondent was Rs.16,726/- and that the said amount was paid by cheque dated 14.02.2011 as established by marking Ex.P7, this Court is of the view that finding of the second respondent that the first respondent was not paid a full one month salary, cannot be justified. Thus this Court finds that the statutory requirement regarding payment of one month salary is fully complied with in this case.

11. As already stated supra, the quantum of salary payable on the date of dismissal as existed then alone should be taken into consideration to find out as to whether such salary was paid in full or not. In this case, the second respondent has taken note of the subsequent development viz., issuance of G.O.98 dated 28.03.2011 giving a retrospective benefit to conclude that the first respondent was not paid full one month salary. I find that the said finding is unsustainable and consequently, the order of the second respondent refusing to grant approval also cannot be sustained. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the second respondent is directed to grant approval within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai.
- 2.The Management,
Tamilnadu State Transport Corporation
(Kumbakonam Division), Limited,
27, Railway Station New Road,
Kumbakona 612 001.

+1cc to the Government Pleader Sr.3156

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