



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.29719 of 2004
and M.P.No.36099 of 2004

Tamilnadu State Transport Corporation
(Villupuram Division III) Ltd,
Kancheepuram.
Rep by its General Manager.

... Petitioner

-vs-

1.The Presiding Officer,
Industrial Tribunal,
Chennai -104.

2.Hussain Basha

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the 1st respondent in complaint No.5/96 dated 26.09.2003 and quash the same.

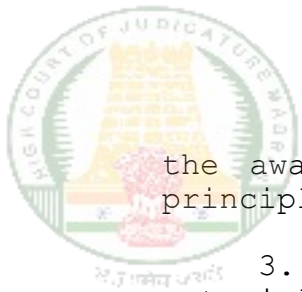
For Petitioner : Mr.C.S.K.Sathish

For R2 : Mr.P.V.Sudhakar

O R D E R

This Writ Petition has been filed, challenging the award of the Labour Court, passed under Section 33(A) of the I.D.Act 1947 in Complaint No.5 of 1996 (in I.D.No.62 of 1982).

2. It is the case of the Management that the 2nd Respondent / Employee joined service on 11.11.1968 at Pallavan Transport Corporation and his service was confirmed on 01.08.1970. However, he was dismissed from service on 15.05.1995. It is further case of the Management that subsequently, there was bifurcation of the Pallavan Transport Corporation and the Employee was attached to Puratchi Thalaivar MGR Transport Corporation, Kancheepuram and he continued his services therein. When the dispute in I.D.No.62 of 1982, relating to bonus payable to employees for the period 01.04.1981 to 31.03.1982 was raised, the Petitioner Management was not a party to the dispute and there was no subsistence of relationship between the Management and the Employee. Therefore,



the award passed by the Tribunal is contrary to the settled principles of law and is liable to be set aside.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. Admittedly, the Petitioner / Corporation was formed subsequently and it does not mean that the benefits accrued or likely to accrue during the services rendered by the employee under the earlier Corporation is completely wiped out. In terms of Section 18 of the I.D.Act, 1947, the award that may be passed by the Tribunal / Labour Court will be binding on the parties and it may be extended to the past, present and future workers and relevant portion of Section 18 of the I.D.Act 1947 is extracted below.

"Section 18 of Industrial Disputes Act 1947 -

18. Persons on whom settlements and awards are binding

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(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award] which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal] which has become enforceable] shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;

(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;

(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.



5. It is no doubt true that Puratchi Thalaivar MGR Transport Corporation is a successor in interest, but, however, the Management is bound to file an Approval Petition for their action in dismissing his employee from services, irrespective of whether the Employee concerned may or may not have the benefit of the award in I.D.No.62 of 1982. The contention made by the Management, that pursuant to an accident caused by the Employee after formation of the new Corporation, there is no need to file an Approval Petition, cannot be accepted, as it will have a far-reaching effect. Section 33(2)(b) of the I.D.Act, 1947 mandates to obtain approval and it has to be adhered to even by the successor in interest. When an Approval Petition is not filed or if it is withdrawn after filing, the Employee is deemed to be in service and is entitled to all the benefits. The Hon'ble Supreme Court in the case of Jaipur Zila Sahakari Boomi Vikas Bank Ltd vs. Ram Gopal Sharma and others, reported in (2002) 2 SCC 244 held that in case the employer failed to comply with the mandatory provisions of the Industrial Disputes Act, more particularly, either seeking approval of their action or permission, depending upon facts and circumstances of the case, the employee need not knock at the doors of the Court to get illegal order set aside and that the employee is deemed to be in service. Hence, the contention of the Management, that the subsequent Corporation, namely, the present Management, being successor in interest, cannot be foisted with any liability, does not hold good.

6.The Labour is empowered to execute the Award and bring the issue to a logical end. That apart, in the light of the decision of the Supremen Court in teh case of Jaipur Zila Sahakari Boomi Vikas Bank Ltd vs. Ram Gopal Sharma (supra), proceedings under Section 33 r/w C(1) 11-B, 33 (2) and 29 son of the Industrial Dispute Act, 1947 are independent of each other. For better understanding, relevant portion of the said decision is extracted hereunder:

"16. Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under Section 33-A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under Section 33-A. There is nothing in Sections 31, 33 and 33-A



to suggest otherwise even reading them together in the context. These sections are intended to serve different purposes."

7. In view of the above, this Court makes it clear that, the aforesaid provisions are independent of each other and invoking the relief under provision cannot be quoted as prohibition of proceeding with other provisions of the Act. Dehors the Execution Petition, it is needless to mention that the Award of the Labour Court will be in force, till it is substituted by an Award of Settlement. Hence, the question of limitation not only for execution, but also for sanctioning prosecution and bringing the issue to a logical end by a Criminal Court cannot be curtailed. If any complaint under Section 29 is filed, the Government must sanction prosecution against the persons falling under Section 32 of the Industrial Disputes Act and the Criminal Court which is going to deal with the matter must bring the issue to a logical end.

8. In fine, I find that there is no perversity in the award passed by Tribunal under Section 33 (A) of the I.D. Act, 1947, warranting interference by this Court. Hence, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

dpq

To:

The Presiding Officer,
Industrial Tribunal,
Chennai -104.

+1cc to Mr.C.S.K.Sathish, Advocate SR.No.37636

W.P.No.29719 of 2004

PMK (CO)
GMY (08/12/2021)