



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.31626 of 2004

The Management of
Metro Transport Corporation,
Formerly known as
Pallavan Transport Corporation Ltd.,
Pallavan House,
Chennai 600 002.

... Petitioner

vs.

1. The Presiding Officer,
Industrial Tribunal,
Tamilnadu,
Chennai 600 104.

2. Mohan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records pertaining to the Award dated 16.07.2003 made in Complaint No.2 of 1995 on the file of the 1st Respondent herein and quash the same.

For Petitioner : Ms.Pooja Damodaran
for Mr.K.Moorthy

For 1st Respondent : Mr.V.Ajoy Khose

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 16.07.2003 made in Complaint No.2 of 1995 on the file of the 1st Respondent herein.

2. It is seen that, the 2nd Respondent herein, who was an employee of the Petitioner/Transport Corporation was dismissed from service by an order dated 19.09.1994 for a misconduct, which is not in dispute. Admittedly, the Petitioner/Transport Corporation has not filed an Application for approval of their action under Section 33(2)(b) of the Industrial Disputes Act,



1947.

3. It is the duty cast upon the employer to file an Application under Section 33(2)(b) of the Industrial Disputes Act, 1947 read with Rule 64 of the Tamilnadu Industrial Disputes Rules, 1958, seeking approval of their action by complying with the mandatory provisions stipulated therein. Though the 2nd Respondent/employee was dismissed from service on 19.09.1994, the Award was passed by the Tribunal in Complaint No.2 of 1995 on 16.07.2003. Nowhere in the Award, the employee's date of birth is mentioned, even though the employee contends that, his date of birth is 17.01.1950 and that, his date of retirement is 31.01.2008 on completion of 58 years of service. It is the contention of the learned counsel for the Petitioner/Transport Corporation that, on the date of dismissal, the employee was 53 years old and he attained the age of superannuation in 1999 itself.

4. This Court is not taking up the issue with regard to the disputed date of birth of the employee in the present Writ Petition. In terms of the Apex Court decision in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma, (2002) 2 SCC 244, it is the mandatory duty on the part of the employer to file an Application for approval of their action. In case, such an Application filed is withdrawn, the order of dismissal of the employee becomes nonest in the eye of law and the employee is deemed to be in service.

5. In the case on hand, as it is represented by the learned counsel appearing for the 2nd Respondent/employee that, the 2nd Respondent/employee had already attained superannuation and that, he had received the monetary benefits during the pendency of the Writ Petition, the proposal given by the Government on behalf of the Petitioner/Transport Corporation vide Letter No.5370/C2/2021, dated 24.07.2021, cannot be given effect to the case of the employee herein, as it would deprive him all the terminal benefits.

6. I find much force in the contention of the learned counsel appearing for the 2nd Respondent/employee. As it is represented by the learned counsel appearing for the 2nd Respondent/employee that, the employee is willing to give up backwages, the Petitioner/Transport Corporation i.e. the employer is expected to settle all the terminal benefits due to the 2nd Respondent/employee, including payment of Gratuity if any, Provident Fund and Pension, within a period of four months from the date of receipt of a copy of this order, as the employee is deemed to be in service pursuant to the Award under challenge.



7. It is made clear that, the Provident Fund contribution for the period in question, i.e. from the date of dismissal of the employee till the date of his superannuation, for both the employee and the employer shall be paid by the Petitioner/Transport Corporation to the Provident Fund Trust without any interest. It is also made clear that, the remaining amount towards backwages need not be paid, as the same is given up.

The Writ Petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Presiding Officer,
Industrial Tribunal,
Tamilnadu,
Chennai 600 104.

Copy to:
The Manager of Metro Transport Corporation,
(Formerly Pallavan Transport-Corporation)
Pallavan House, Chennai-600 002.

+lcc to Mr.V.Ajoy Khose, Advocate, S.R.No.37153
+lcc to Mr.K.Moorthy, Advocate, S.R.No.37328

W.P.No.31626 of 2004

PMK(CO)
CB(09/09/2021)