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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.NO.3589/2019

K.Senthil Raja

...Appellant/2nd Appellant

-VS-

1. The General Manager,
Tamil Nadu State Transport Corporation
(Salem) Limited,
No.12, Ramakrishna Salai,
Salem-7.

...Respondent/Petitioner

2. The Special Deputy Commissioner of Labour,
D.M.S. Compound, Chennai.

...Respondent/Respondent

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge made in W.P.No.5725 of 2014 dated 12.09.2018 so far as it relates to the denial of back wages from the date of dismissal of the appellant, namely, 30.03.2012 till 31.12.2015.

Prayer in W.P.No.5725 of 2014:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, to call for the records of the order passed by the 1st respondent in Approval Petition in A.P.No.124 of 2012 dated 27.12.2012 and to quash the same as illegal.



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For Appellant : Mr.M.Palani

For 2nd Respondent : Mr.S.Magesh
for Mr.D.Raghu

For 1st Respondent : Mr.V.Manoharan

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

This Writ Appeal has been directed against the order of the learned Single Judge made in W.P.No.5725 of 2014 dated 12.09.2018 so far as it relates to the denial of back wages from the date of dismissal of the appellant, namely, 30.03.2012 till 31.12.2015.

2. Learned Counsel appearing for the appellant submitted that the appellant was employed in the Technical Division of the 1st respondent Transport Corporation from 07.12.1984. While so, he was served with a Charge Memo dated 03.09.2011 alleging using of abusive language against his supervisor. Consequently, a domestic enquiry was ordered in which the appellant fairly participated and the Enquiry Officer, on completion of the enquiry, submitted his report holding that the charges levelled against the appellant stood proved. Thereafter, he was also furnished with a copy of the enquiry report asking him to explain as to why he should not be dismissed from service to which the appellant has also submitted a detailed explanation stating that the charges levelled against him have not been properly probed into. Therefore, the findings of the Enquiry Officer holding him guilty cannot be accepted. However, without considering the explanation offered by the appellant, the 1st respondent Transport Corporation, disproportionate to the proved charges, dismissed him from service. When the allegation put against the appellant was only using of abusive language against the supervisor, awarding the punishment of dismissing from service is disproportionate, shocking the consciousness of everyone.



3. Learned Counsel for the appellant further submitted that however, the 1st respondent Management filed an Approval Petition before the Special Deputy Commissioner of Labour, Chennai, the 2nd respondent herein seeking approval of the order of dismissal dated 30.03.2012. The 2nd respondent, after going into detail while examining the petition filed under Section 33 (2) (b) of the Industrial Disputes Act, 1947 gave a finding that as the appellant was the President of the Anna Labour Union, the 1st respondent Management appears to have adopted unfair labour practice by giving a false allegation. The 2nd respondent also finding that the 1st respondent Management failed to prove the allegation against the delinquent with independent witness and acceptable document and as there was a suspicion in imposing the punishment, finally came to the conclusion that the action of the 1st respondent management is nothing but an unfair labour practice. Therefore, finding that a prima facie case was not made out by presenting the documents and examining the independent witnesses, dismissed the application filed under Section 33 (2) (b) of the industrial Disputes Act, 1947 as per the ratio laid down by the Apex Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Limited vs Ram Gopal Sharma and others reported in (2002) 2 SCC 244, that the appellant herein deemed to be in service for the simple reason that if the order of dismissal dated 30.03.2012 passed by the 1st respondent failed to get the approval of the competent authority, nothing more is required to be drawn by the employee as it will have to be deemed that the order of discharge or dismissal has never been passed. Consequently, the employee is deemed to have continued in service. This settled legal position has been overlooked by the learned Single Judge while dismissing the writ petition filed by the 1st respondent Management seeking cancellation of the refusal order passed by the 2nd respondent granting approval of the dismissal order.

4. Again learned Counsel for the appellant submitted that when the appellant received the notice in W.P.No.5725/2014 filed by the 1st respondent, the appellant moved M.P.No.3/2014 seeking 17(b) wages, in view of the rejection of the approval clearly mentioning therein that the appellant was not employed anywhere else and was suffering without salary and unable to support his family and found it very difficult to make both ends to meet and accepting the affidavit filed by the appellant for



payment of 17-b wages, this Court also gave a direction to the 1st respondent to pay the last drawn wages by order dated 06.10.2015 and pursuant to the said order, the 1st respondent paid the last drawn wages w.e.f. 31.12.2015. Therefore, it goes to show that the appellant was without employment and he was survived with the help of 17-b wages. Hence, the order passed by the learned Single Judge refusing to grant back wages for the period he was out of employment is uncalled for. In any event, when the Constitution Bench of the Apex Court in Jaipur Zila case cited supra has been overlooked, the impugned order is liable to be set aside by allowing the present Writ Appeal, he pleaded.

5. Per contra, learned Counsel for the 1st respondent submitted that the appellant was found guilty of charges by the domestic enquiry. The Enquiry Officer, who conducted the enquiry also has given fair and proper opportunity to the appellant. The 2nd respondent herein while seeking approval for the order of dismissal from service dated 30.03.2012 also has given a clear finding that the domestic enquiry against the appellant was fairly and properly conducted. Instead of the finding given by the 2nd respondent that there was fair and proper enquiry held and charges levelled against the appellant, the 2nd respondent ought not to have refused the approval of the order of dismissal dated 30.03.2012. Therefore, the Management of Transport Corporation came to this Court by filing W.P.No.5725/2014. The learned Single Judge considering the case of both parties approving the punishment meted out to the appellant for abusing the supervisor in not giving him duty as per the whims and fancies of the appellant has rightly refused the back wages for the non-employment period. This is in compliance of the principle that no work no pay. Admittedly, in the present case, when the appellant was not employed during the period from the date of dismissal till he reached the age of superannuation i.e. from 30.03.2012 till 31.07.2018 and more than that he was also paid with 17(b) wages by this Court, therefore, the Appeal filed before this Court seeking the back wages for the period of non-employment is unjustified and unfair and as such, the impugned order deserves to be affirmed by this Court.

6. We are unable to agree with the said submissions of the learned Counsel for the 1st respondent for the simple reason



that when the charge framed against the appellant shows that he abused the supervisor by using unparliamentary words for which he was imposed with the major penalty of dismissal from service on 30.03.2012, however, to get approval of the dismissal order, the 1st respondent as per Section 33(2)(b) of the Industrial Disputes Act, 1947 approached the competent authority. The 2nd respondent rightly going through the nature of allegation, for which the appellant was charged found that only minor allegation has been made against him. Inasmuch as he alleged to have abused the Supervisor for not giving him suitable duty for which he was departmentally prosecuted. Finally, an order of dismissal has been imposed against him on 30.03.2012. At this stage, it has to be borne in mind that the appellant is the leader of the Labour Union. Therefore, when the 1st respondent Transport Corporation, as per the finding given by the 2nd respondent, has imposed major penalty of dismissal from service, taking it as unfair labour practice, the application for approval of dismissal filed under Section 33 (2)(b) of the Act was refused. Aggrieved thereby, the 1st respondent came to this Court with the Writ Petition. The learned Single Judge finding no justification whatsoever dismissed the same and while dismissing the writ petition, the appellant herein has deprived of the back wages for the period of non-employment. As rightly canvassed by the learned Counsel for the appellant that when it is the well settled legal position that once the prayer for granting approval to the order of dismissal is refused, nothing more is required to be done by the employee as it will have to be deemed that the order of discharge or dismissal has not been passed. Consequently, the employee is deemed to have continued in service entitling him to all the benefits available.

7. In this regard, it is relevant to reproduce the relevant paragraph of the judgment in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Limited vs Ram Gopal Sharma and others reported in (2002) 2 SCC 244 here under:

'14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer, has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were



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complied with or not etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if the order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of the employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position, there is no need of a separate or specific order for his reinstatement.''

8. Secondly, the learned Counsel for the appellant has demonstrated before us that the appellant remained all along without any employment and not gainfully employed in anywhere else and after the filing of the W.P.No.5725/2014 by the 1st respondent before this Court, challenging the order passed by the 2nd respondent refusing to grant prior approval for dismissal, M.P.No.3/2014 was filed in W.P.No.5725/2014 by the appellant herein seeking 17-b charges for payment of last drawn wages in view of rejection of approval. The said application was also accompanied with an affidavit and in para 9 therein, the appellant had made it clear that he was not employed anywhere else and has been suffering without salary and he was unable to support his family, accepting the said affidavit filed, by an order dated 06.10.2015 the 1st respondent was directed to pay 17-b wages and accordingly, the appellant was getting the 17-b wages till he reached the age of superannuation. Therefore, when it is the settled legal position that once the prayer for granting approval to the order of dismissal is refused, nothing more is required to be done by the employee as it will have to be deemed that the order of discharge or dismissal has not been passed and the employee is deemed to have continued in service entitling him to all the



benefits available, the impugned order depriving him of back wages is without any justification. Therefore the same is liable to be set aside.

WEB COPY 9. In the result, the order of the learned Single Judge made in W.P.No.5725 of 2014 dated 12.09.2018 so far as it relates to the denial of back wages from the date of dismissal of the appellant, namely, 30.03.2012 till 31.12.2015 is set aside and the 1st respondent is directed to pay the back wages for the said period, within a period of four weeks from the date of receipt of a copy of this Order. No costs.

Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

1. The General Manager,
Tamil Nadu State Transport Corporation
(Salem) Limited,
No.12, Ramakrishna Salai,
Salem-7.
2. The Special Deputy Commissioner of Labour,
D.M.S. Compound, Chennai.

+1cc to Mr.M.Palani, Advocate, S.R.No.39365

+1cc to Mr.D.Raghu, Advocate, S.R.No.39366

+1cc to the Government Pleader, S.R.No.39719

W.A.No.3589/2019

MG(CO)
RLP(16/09/2021)