IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2021

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.8827 of 2018
and
W.M.P.Nos.10694 of 2018 & 6633 of 2020

The General Manager,
Tamilnadu State Transport
Corporation (Covai) Ltd.,
Erode Region, Chennimalai Road,
Erode. ...Petitioner

-Vs-

1.The Special Deputy Commissioner
of Labour,
DMS Compound,
Chennai – 600 006.

2.S.Srinivasan
Conductor Staff No.J06813 ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for records of the first respondent made in AP.No.311 of 2013 dated 14.12.2015 and consequently quash the same.

For Petitioner : Mr.A.Sundaravadanan

For R1 : Mr.S.Arumugham
Government Counsel
For R2 : Mr.V.Ajoy Khose

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The Management is aggrieved against the rejection of their Approval Petition filed by the second respondent herein under Section 33(2)(b) of the Industrial Disputes Act, 1947. The second respondent was dismissed from services by an order dated 16.12.2013 with effect from 09.07.2013. The petitioner seeking approval was rejected on the sole ground that the one month wages was not entirely paid to the second respondent herein.

3. A perusal of the order and the ground raised by the petitioner reveals that the petitioner disputes the one month wages of Rs.19,301/- that was paid at the time of dismissal, by claiming that they were entitled for an additional sum towards dearness allowance. Such a claim for dearness allowance is made based on the Government Orders issued, revising the allowance from 80% to 90%. Admittedly, such a revision of the dearness allowance was made after the second respondent was dismissed from services, but with retrospective effect.

4. In identical circumstances, when an issue was raised before this Court in the case of The Management of Metropolitan Transport Corporation, (Chennai) Ltd. Vs. Thiru.A.Ramesh Babu and another in W.P.Nos.33497 to 33505 of 2015, dated 03.02.2016, claiming that, denial of the difference in the wages owing to non-payment of the revised dearness allowance would amount to denial of the 'one month wages' itself, it was held that such a non-payment of the deficit amount cannot be regarded as a non-compliance of the mandatory provisions under Section 33(2)(b) of the Act. The relevant portion of the order reads as follows:

> "11. Admittedly, the difference in wage which the second respondent had pointed out in the said impugned order is approximately around Rs.2400/- and in the said impugned order, the second respondent had stated that this amount becomes payable on account of the variation in the Dearness Allowance at 58%. The question would be as to whether the approval sought for could have been rejected on the said ground. The law on the subject is no longer res integra and the application of the Management for approval has to be tested on the conduct of the Management. The calculation which was

done by the Management when the wages was computed, appears to have been based on the last drawn wages. However, the second respondent while considering as to whether there has been compliance of Section 33(2)(b) of the I.D.Act was inclined to pass the impugned order by taking into consideration the revised Dearness Allowance.

12. As noticed above, the Management undertook to pay any difference that may arise. Therefore, if there was any calculation mistake or any other error, the Management ought to have been granted an opportunity to make good the deficit. What is important to be seen is as to whether the mandatory requirement under Section 33(2)(b) of the I.D.Act was complied with before seeking for approval of the order of termination.

13. In my view, this has been done by the Management and the second respondent while considering the issue as regards compliance of Section 33(2)(b) of the I.D.Act, failed to take note of the stand taken by the Management that they are willing to make good the deficit, if any. To decide as to whether there was any deficit the aspect as to whether revised Dearness Allowance was applicable to the workmen had to be decided. However, such exercise was not done by the second respondent. Thus, this Court has no hesitation to hold that the Management had complied with the provision of Section 33(2)(b) of the I.D.Act. Therefore, to that extent, the impugned order calls for interference."

5. The aforesaid extract is self explanatory. As such, the non-payment of the deficit amount of dearness allowance owing to the subsequent revision, cannot be termed as denial of one

month salary to the workman. On this ground, the rejection of the petitioner's approval petition cannot be sustained.

6. At this juncture, it is brought to the notice of this Court that the second respondent herein was not paid with the 'last drawn wages' under Section 17B of the Act. The second respondent has also filed an affidavit before this Court, dated 26.02.2020, wherein he has stated that he is not gainfully employed from the date of dismissal till date. It is needless to point out that when the approval petition was rejected on 14.12.2015, the second respondent herein is deemed to have been continuing in service from the date of dismissal and therefore, he would be entitled for the wages under Section 17B of the Act.

7. In the light of the above observations, the impugned order dated 14.12.2015 passed by the first respondent herein is quashed. Consequently, the dismissal order issue to the second respondent herein dated 16.12.2013 is declared as approved. There shall also be a direction to the petitioner-Management to pay the last drawn wages of the second respondent under Section 17B of the Act from 14.12.2015 till date, within a period of 4 weeks from the date of receipt of a copy of this order. The second respondent is also at liberty to challenge the dismissal order, by raising an appropriate Industrial Dispute, for which purpose, the limitation prescribed in the Act was applied and the date of commencement of such limitation will be from the date of this order, i.e., 06.10.2021.

8. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

hvk/ata

To

1.The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai – 600 006.

2. The General Manager,
Tamilnadu State Transport
Corporation (Covai) Ltd.,
Erode Region, Chennimalai Road,
Erode.

+1cc to the Government Pleader, S.R.No.52745

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and
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BS(CO)
SB(01/11/2021)