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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.13444 of 2021

The Management,
Tamil Nadu State Transport
Corporation (Villupuram) Limited,
represented by its General Manager,
Kancheepuram Region,
Ponneri Karai,
Bengaluru National Highways,
Kancheepuram - 631 552.

... Petitioner

vs.

1. R.Thanigaivel
2. The Special Joint Commissioner of Labour,
DMS Campus, Anna Salai,
Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 23.07.2018 passed by the 2nd Respondent in Approval Petition No.131 of 2014 and quash the same, consequently direct the 2nd Respondent to approve the order of the Petitioner, dated 12.05.2014 dismissing the 1st Respondent from service.

For Petitioner : Mr.L.Ramanathan
for Mr.K.J.Sivakumar

For 1st Respondent : Mr.N.Ishak

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 23.07.2018 passed by the 2nd Respondent/Authority in Approval Petition No.131 of 2014 and for a consequential direction to the 2nd Respondent/Authority to approve the order dated 12.05.2014 passed by the Petitioner, dismissing the 1st Respondent/employee from service.



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

3. It is represented by the learned counsel appearing for the 1st Respondent/employee that, the 1st Respondent/employee joined the services of the Petitioner/Transport Corporation on 24.04.2008 and he was dismissed from service on 12.05.2004, after enquiry. He has rendered five years of qualifying service, excluding one year non-qualifying service. He further submitted that, during the pendency of this Writ Petition, the 1st Respondent/employee filed a Petition claiming wages that, he is without employment.

4. The Labour Court rejected the Approval Petition filed by the Petitioner/Management in A.P.No.131 of 2014 on the ground that, the enquiry was not conducted properly and not in accordance with the principles of natural justice and that, there is victimization.

5. The Apex Court in a decision rendered in John D' Souza vs. Karnataka State Road Transport Corporation reported in (2019) 18 SCC 47 held that, if the domestic enquiry is not conducted in a fair and proper manner, it is the mandatory duty on the part of the Authority to give an opportunity to the Management to establish the charges in the enquiry, provided there is a plea seeking for an opportunity. However, when there is no plea by the employer that, in case, the domestic enquiry is not fair and proper, they must be given an opportunity to let in evidence, in the light of the Apex Court decision in the case of Shankar Chakravarti vs Britannia Biscuit Co.Ltd reported in 1979 SCC (3) 371.

6. In the case on hand, the 1st Respondent/employee's past records are also bad. He caused two fatal accidents apart from the one, for which he was dismissed from service and in one fatal accident, 64 passengers in the Bus were injured.

7. In view of the above, this Court opines that, the order passed by the 2nd Respondent/Authority requires interference in the light of the principle laid down in John D' Souza's case (supra), as the order of rejection of the Approval Petition passed by the Authority is not in accordance with law. Accordingly, this Court interferes with the order dated 23.07.2018 passed by the 2nd Respondent/Authority and sets aside the same.

8. It is open to the 1st Respondent/employee to raise an Industrial Dispute under Section 2(A) of the Industrial Disputes Act, 1947, as, remanding the matter to the Authority is not going to help him. In case, after remand, the Approval Petition



is once again rejected by the Authority, then, the employee has to raise an Industrial Dispute. Instead of doing so, he can straightaway raise an Industrial Dispute challenging the dismissal order.

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9. It is made clear that, when the the 1st Respondent/employee raises an Industrial Dispute under Section 2-A of the Industrial Disputes Act, 1947, the period during which the matter is pending before the Court will have to be excluded, including the period of delay on the part of the Management in filing the Writ Petition.

10. Once the Authority confirms the order passed by the Management, the order of dismissal of the employee will get merged with the order of the Authority in the Approval Petition, and the period of limitation begins from the date of grant of approval and not prior to that date, even though the dismissal order is held to be valid. Hence, the period of limitation will run only from the date of the order in the Approval Petition, when the dismissal order is confirmed by the Tribunal/Authority/Board.

11. Even though Section 17-B of the Industrial Disputes Act, 1947 is not applicable to the order passed by the Authority under Section 33(2)(b) of the Industrial Disputes Act, 1947, this Court is of the view that, the order passed by the Authority under Section 33(2)(b) of the Industrial Disputes Act is more than one of reinstatement. Since the Approval Petition has been rejected by the Authority, the 1st Respondent/employee is deemed to be in service, in the light of the judgment rendered by this Court in the case of Tata Iron and Steel Company Ltd. vs. G.Ramakrishna Ayyar reported in 1950 LLJ 1043. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"4. It is next contended by Mr.Ramakrishna Ayyar that, in any event the order of the Commissioner was bad insofar as it directed a reinstatement in service of the first respondent. The argument was that, there is no specific provision in the Act which enabled the Authority to make an order of reinstatement. He referred us by way of analogy to the jurisdiction of Industrial Tribunals to make orders of reinstatement, but, we think such reference is wholly irrelevant. To a certain extent we agree with the learned counsel, namely, that the Authority should not have said that the



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employee would be entitled to reinstatement. But this is only quarrelling with his language. Actually the legal position is this. The employer passes an order dispensing with the services of an employee. That order is carried on appeal to a higher Authority. That Authority reverses the decision of the employer and the result is that, the order of the employer is set aside. It is no longer in existence. It follows that, the effect of the original order of the employer also disappears and it is as if the order is nonest. Though, therefore, it may not be quite accurate to say that the employee will be entitled to reinstatement in service, yet the result of the order of the Appellate Authority is virtually the same. Probably, the result is that, the appellate order is even better than an order of reinstatement. It is as if the employee had never been properly dismissed from service. In this view, it is not necessary to quash the order of the appellate authority even in this respect."

12. In view of the decision rendered in Tata Iron and Steel Company's case (supra), as the 1st Respondent/employee is deemed to be in service on account of rejection of Approval Petition, he is entitled to wages from the date of rejection of the Approval Petition till the said order is set aside by this Court, i.e. till today.

The Writ Petition is allowed on the above terms. No costs. Consequently, connected W.M.P.Nos.14321 and 14322 of 2021 are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

(aeb)



To:

The Special Joint Commissioner of Labour,
DMS Campus,
Anna Salai,
Chennai.

+1cc to Mr.N.Ishak, Advocate, S.R.No.36777

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.36720

W.P.No.13444 of 2021

RSV(CO)
SU(05/10/2021)