



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6850 of 2017

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Trichy - 612 001.

... Petitioner

vs.

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

2. A.Jesuraj

... 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 02.05.2016 passed by the 1st Respondent in Approval Petition No.526 of 2012 and quash the same and consequently direct the 1st Respondent to approve the order of the Petitioner, dated 06.11.2012, dismissing the 2nd Respondent from service.

For Petitioner : Mr.D.Venkatachalam

For 2nd Respondent : Mr.V.Manisekaran

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 02.05.2016 passed by the 1st Respondent in Approval Petition No.526 of 2012 and for a consequential direction to the 1st Respondent to approve the order dated 06.11.2012 passed by them, dismissing the 2nd Respondent from service.



2. It is seen that, the 1st Respondent/Authority has rejected the Approval Petition filed by the Petitioner/Transport Corporation on the ground that, non-examination of Branch Manager of the Petitioner/Transport Corporation is fatal to the case.

3. Learned counsel for the Petitioner/Transport Corporation contended that, the 1st Respondent/Authority failed to note that, the 2nd Respondent/employee absented himself from duty without prior permission. He went on to contend that, the decision taken by the 1st Respondent/Authority is beyond his scope and it is not in consonance with the guidelines framed by the Apex Court in the decision rendered in the case of Lalla Ram vs. Management of D.C.M. Chemical Works Ltd. reported in AIR 1978 SC 1004.

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

5. The only reasoning given by the 1st Respondent/Authority for rejecting the Petitioner's Approval Petition is that, the Branch Manager has not been examined. This Court is not willing to accept the same, as even hearsay evidence is admissible. The Authority has erred in rejecting the Petitioner's Approval Petition on this ground and hence, the order passed by the 1st Respondent/Authority is set aside.

5. An employee can raise an industrial dispute under Section 2(A) of the Industrial Disputes Act, 1947. A reading of Section 2(A) of the Act makes it clear that, an industrial dispute has to be raised by the employee within three years from the date of dismissal. Even though, an order of dismissal has been passed on a particular date, if the Approval Petition filed by the Management is pending without attaining finality, it may take effect at a retrospective date. Hence, the period of limitation prescribed under Section 2(A) of the Act will commence on and from the date of approval of the action of the Management, in confirming the order of dismissal. Otherwise, the purpose of Section 2(A) of the Industrial Disputes Act, 1947, itself will be defeated.

6. 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.

7. Similarly, the period during which the Writ Petition is pending shall also be excluded for the purpose of limitation.

The Writ Petition is allowed on the above terms. No costs. Consequently, connected W.M.P.No.7426 of 2017 is closed.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

(aeb)

To:

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

+1CC to Mr.D.Venkatachalam, Advocate, SR.No.37116

W.P.No.6850 of 2017

SR(CO)
B.VC (21/09/2021)