



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2021

CORAM

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

W.P. No. 32018 of 2018
and
W.M.P. No. 37272 of 2018

The Management,
Represented by its General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Trichy Region,
Trichy - 620 001.

... Petitioner

-vs-

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

2.N.Chokkar

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 09.07.2018 passed by the first respondent in Approval Petition No.153 of 2012 and quash the same, consequently direct the first respondent to approve the order of the petitioner dated 16.04.2012 dismissing the second respondent from service.

For Petitioner : Mr.D.Venkatachalam

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate for R1
No appearance for R2

O R D E R

Petitioner / Transport Corporation has come up with this Writ Petition challenging the order dated 09.07.2018 passed by the first respondent in Approval Petition No. 153 of 2012 and for a consequential direction to the first respondent to approve the order dated 16.04.2012 passed by them, dismissing the second respondent from service.



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

3. The Authority rejected the Approval Petition filed by the petitioner / Management in A.P. No. 153 of 2012 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.

4. Once the domestic enquiry is vitiated, in the light of the judgments rendered by the Hon'ble Apex Court in the case of John D' Souza v. Karnataka State Road Transport Corporation reported in (2019) 18 SCC 47 and in the case of Management, Tamil Nadu State Transport Corporation (Villupuram) Limited, Kancheepuram Region, Kancheepuram v. M.Chitti Babu (deceased) and others reported in 2021-I-LLJ-17 (Mad), the Authority / Lower Court / Tribunal must give an opportunity to the employer to establish the charges and hence in the case on hand the matter will have to be remanded. If the employer had sought for an opportunity in the application to establish the charges and in case, the departmental enquiry is held to be bad, only then an opportunity need to be given. In Shankar Chakravarti vs. Britannia Biscuit Company Limited and others reported in (1979) 3 SCC 371, the Apex Court held that there is no need for the Labour Court or Tribunal to remind the Management as to what they should do. Even if the matter is remanded and approval is granted by the Authority on remand, the employee is entitled to raise an Industrial Dispute and the Labour Court is empowered to take a different view in terms of Section 11(A) of the Industrial Disputes Act, 1947, taking into account the past record

5. In view of the above, this Court opines that, the order passed by the first 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 09.07.2018 passed by the first respondent / Authority and sets aside the same.

6. It is open to the second 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 as the authority may grant approval again. In case, after remand, the Approval Petition is once again rejected by the Authority, then, the employee need not raise an Industrial Dispute. Instead of litigating endlessly, he can straightaway raise an Industrial Dispute challenging the



dismissal order without waiting for an adverse order in Approval Petition.

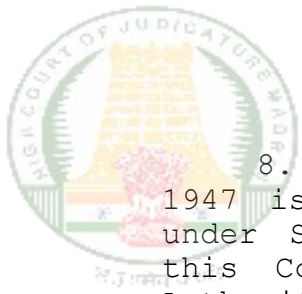
7. This Court in a decision dated 30.07.2021 passed in W.P. No. 6850 of 2017 has dealt with the period of limitation with regard to raising of Industrial Dispute and the relevant portion of the order reads as follows:

"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."

If any Industrial Dispute is raised, the period of limitation, if not already expired, will commence only from the date of order of this Court in the Writ Petition.



8. 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 second 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 (0) 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 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."



9. In view of the decision rendered in Tata Iron and Steel Company's case (supra), as the second 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, even if the order of dismissal is restored and relates back to the original date of order of dismissal. Even though this decision is rendered under the Tamil Nadu Shops and Establishments Act 1947, Section 41 of the Tamil Nadu Shops and Establishment Act and 33(2) of the Industrial Disputes Act are pari materia. Once the order of the employer is set aside, the employee is deemed to be in service till the order of the employer is restored and relates back.

10. The Writ Petition is allowed on the above terms. No costs. Consequently, connected W.M.P. No. 37272 of 2018 is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

vji

To

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

+1cc to Mr.D.Venkatachalam, Advocate SR. No.37096
+1cc to the Government Pleader SR. No.40434

W.P. No. 32018 of 2018

and

W.M.P. No. 37272 of 2018

SSV (CO)

PR (01/12/2021)