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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.NO.32277 OF 2018

AND

WMP.NO.37519 OF 2018

The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Vellore Region,
Vellore-9, Rep. By its Manger.

...Petitioner

VS.

1. Mr.D.Mani
2. Special Deputy Commissioner of Labour,
Chennai.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the order dated 23.08.2017 passed by the Special Deputy Commissioner of Labour, Chennai in A.P.No.71 / 2010 and to quash the same.

For Petitioner : Mr.C.S.K.Sathish

For Respondents : Mr.S.T.Varadarajulu for R1

Mr.S.Arumugam,
Government Advocate for R2



ORDER

The first respondent was dismissed from service on 29.06.2010 on certain proven charges. The application filed by the petitioner / Management under Section 33(2)(b) of the Industrial Disputes Act, 1947 was rejected predominantly on the ground that there was no material to substantiate that the summons for the enquiry was issued to the first respondent, which resulted in exparte enquiry and also on the ground that between 29.06.2010 and the date of filing of the application, there was a delay of 42 days.

2. While the learned Standing Counsel for the petitioner / Management would submit that the Enquiry Report evidences that the first respondent/workman was issued with notices for the enquiry, the learned counsel for the first respondent/workman would state that no such notice was sent and such an objection was raised before the authority and since the authority had found that there was no material to establish that summons was served on the first respondent, had come to the correct conclusion and therefore, the order does not require interference.

3. Insofar as the service of summons is concerned, the authority seems to have perused the material in hand and has come to the conclusion that there was no notice issued. Apparently, summons has not been filed along with the application, which had prompted the authority to come to such a conclusion. A mere reference to the summons in the Enquiry Report cannot be taken as a conclusive proof of summons having been served. Moreso, when the authority is vested with the duty to evaluate the correctness of the enquiry, placing of reliance on the observations made in the Enquiry Report and coming to the conclusion that summons have been served, could not be proper. Even otherwise, the first respondent seems to have raised this objection of not being served the enquiry notice before the authority itself and therefore, in the absence of any material for the authority to satisfy himself on the service of notice, the findings in this regard that an exparte enquiry was conducted, without due service of notice, cannot be found fault with.



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4. Insofar as the other ground viz., delay, on which the approval petition was dismissed is concerned, admittedly there was a delay of 42 days in filing the approval petition from the date of dismissal. Section 33(2)(b) of the I.D. Act mandates filing of an application simultaneously with the punishment of dismissal or discharge. The term "simultaneous" came to be clarified by the Hon'ble Supreme Court in *Straw Board Manufacturing Co. Ltd., Saharanpur v. Govind* reported in (1962) 1 LLJ 420, stating that such a requirement of simultaneous filing of application can be considered, when application is filed immediately after the date of dismissal. But when there is delay of 42 days, it is inordinate in the context of Section 33(2)(b) of the I.D. Act. More particularly when there is no acceptable reason is assigned for such a delay, the delay as such would become fatal for the Management. While that being so and since the application has been made in contravention of the mandatory requirement of Section 33(2)(b) of the I.D. Act, I do not find any infirmity in the findings of the authority while rejecting the approval petition.

5. It is now brought to the notice of this Court that the first respondent/workman had reached the age of superannuation in June, 2013.

6. In the light of the findings rendered by this Court, the approval order dated 23.08.2017 is sustained. Consequently, the first respondent/workman is deemed to have been reinstated into service from 29.06.2010 onwards, which is the date of his dismissal and consequently would be entitled for continuity of service from that date, till the date of his superannuation.

7. At this juncture, the learned counsel for the petitioner Corporation would submit that the first respondent/workman had indulged in several misconducts of similar nature and was punished on 40 occasions. Taking this aspect into consideration, this Court is of the view that the first respondent need not be given the benefit of the backwages. However, all other monetary benefits, if any, for which he may be entitled to, shall be disbursed to him together with Death-cum-Retirement Gratuity (DCRG) disbursement. The petitioner Corporation shall also pay the employer's contribution towards Provident Fund to the Provident Fund Trust to enable the first respondent/workman to receive his pension. The petitioner



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Corporation shall endeavour to settle the terminal benefits to the first respondent/workman, as expeditiously as possible and in any event, within a period of three months from the date of receipt of a copy of this order.

8. The Writ Petition stands dismissed with the above directions. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

Jvm

To

The Special Deputy Commissioner of Labour,
Chennai.

+1cc to M/s.S.T.Varadarajulu, Advocate, S.R.No.52485

+1cc to M/s.C.S.K.Sathish, Advocate, S.R.No.52870

+1cc to the Government Pleader, High Court, Madras-600 104,
S.R.No.52747

W.P.No.32277 of 2018

JP-II(CO)

RLP(26/11/2021)