

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.34812 of 2018
and WMP.No.40372 of 2018

The Management
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited
Rep.by its General Manager,
No.27, New Railway Station Road,
Kumbakonam - 612 001. ... Petitioner

-vs-

1. N. Balasubramanian
2. The Special Deputy Commissioner of Labour
DMS Campus, Anna Salai,
Chennai. ... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, call for the records pertaining to the order dated 08.09.2017 passed by the second respondent in Approval Petition No.233 of 2013 and quash the same, consequently direct the second respondent to approve the order of the petitioner dated 01.08.2013 dismissing the first respondent from service.

For Petitioner : M/s.D.Venkatachalam

For Respondents : Mr.Ajay Khose for R1
Mr.M.Elumalai

Additional Government Pleader for R2

O R D E R

This writ petition has been filed, seeking to call for the records pertaining to the order dated 08.09.2017 passed by the second respondent in Approval Petition No.233 of 2013 and quash the same and consequently direct the second respondent to approve the order of the petitioner dated 01.08.2013 dismissing the first respondent from service.

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

3. The petitioner has come forward with the present writ petition, challenging the order of the Authority under Section 33 of the Industrial Dispute Act, rejecting the Approval Petition No.233 of 2013 of the Management on the ground that the application for dismissal has not been filed simultaneously before the Authority and on that ground, the Authority has interfered with the order passed by the Management and rejected the approval. According to the Management, as per the proposition laid down in the case of Lalla Ram Vs DCM Chemical Works reported in AIR 1978 (C) 1004, the application can be filed within a period of reasonable short time, even if it is not filed simultaneously before the Authority and in the said judgment, the short time has not been mentioned by the Apex Court. The next immediate postal working day would be the shortest time for the Management to despatch the Approval application by post along with the dismissal order and in case if it reaches the authority belatedly, it may not be a problem.

4. In this case, there is a delay of 11 days and if the contention of the Management is accepted in respect of the belated days, then there is every possibility of every Management coming forward to take a stand that the Approval application has been filed within a reasonable time. The word 'simultaneously' as described in the judgment, has got to be interpreted in such a way that it has got to be despatched in the very next postal working day, unless or until, there are reasons like the present pandemic situation.

5. In this case, though the workman was dismissed from service on 01.08.2013, the Approval Petition was filed before the Authority only on 12.08.2013 with a delay of 11 days. Of course, it is true that there is no huge delay and it appears to be a short period. The word 'short time' is different from the word 'simultaneously'. Hence, I am of the view that the rejection by the Authority concerned is perfectly valid. The workman, during the course of the argument, has filed an affidavit dated 16.04.2021, giving up all the back wages, except the amount if any received by the workman. Since the workman has given up the back wages, he shall be reinstated in service, if he has not attained the age of superannuation and in case he has attained the age of superannuation, he shall be reinstated with continuity of service and the consequential benefits, except the PF contribution mentioned in the subsequent paragraphs. The Hon'ble Division Bench of this Court in the case The Tata Iron And Steel Co., Ltd. vs G. Ramakrishna Ayyar and another, reported in (1950) LLJ 1043 Mad had clearly held with regard to the circumstances for reinstatement of an employee as under:

"4.....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 non-est. 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 of the appellate order is even better than an order of reinstatement. It is as if the employee had never been properly dismissed from service."

6. Learned counsel for the 1st respondent has submitted that once the order of dismissal is set aside, he will be in service and the consequential benefits would be followed in the light of the judgment of the Apex Court in the case of Jaipur Zila Sahakari Boomi Vikas Bank Ltd vs. Ram Gopal Sharma and others, reported in (2002) 2 SCC 244.

7. I find much force in the contention of the 1st Respondent. Once an order of dismissal is set aside by the Appellate Authority, reinstatement is in-built in the said order, as the rejection of an application by the Authority on the ground of delay would make the termination order non-est in law. As the rejection under Section 33 (2) (b) of the Industrial Dispute Act, 1947 is pari materia to Section 41 of the Shops, 1947 Act, the employee is deemed to be in service and that as the employee has given up the back wages, the monetary benefits for the entire service, namely, provident fund dues of the employee and the employer has got to be paid by the employer within a period of four months from the date of receipt of a copy of this order, in order to enable the employee to get pensionary benefits on attaining the age of superannuation, if the employee is otherwise eligible for pensionary benefits. To that extent of PF dues of the employee it is backwages for the purpose of contribution and not otherwise.

8. The writ petition is disposed of in the above terms. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dpq

To:

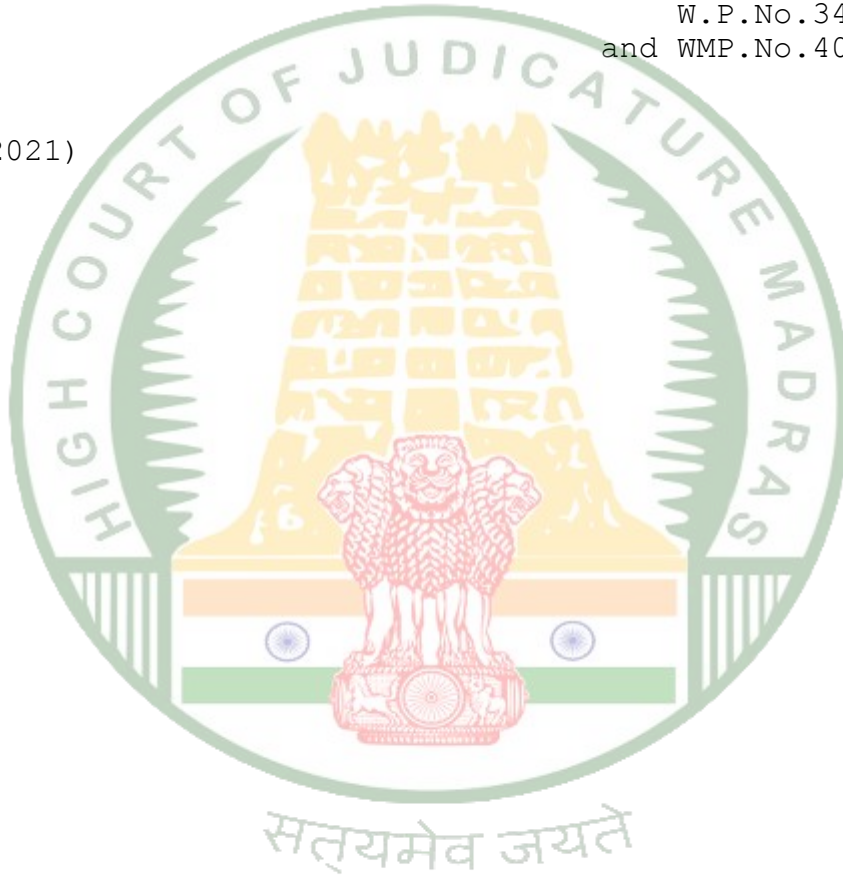
The Special Deputy Commissioner of Labour
DMS Campus, Anna Salai,
Chennai.

+lcc to Mr.V.Ajoy Khose, Advocate, S.R.No.23872

+lcc to Mr.D.Venkatachalam, Advocate, S.R.No.23698

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