



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.11.2021**

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.20631 of 2021

K.Raja

... Petitioner

vs.

The Management of Tamil Nadu State

Transport Corporation (Kumbakonam) Limited,

Represented by its Managing Director,

Kumbakonam.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records from the Labour Court, Kumbakonam relating to the order, dated 10.07.2019, in unnumbered Industrial Dispute case filed by the petitioner, quash the same and consequently direct it to take the case in to file and to enquire the same on merits.

For Petitioner	: Mr.S.Arunachalam
For Respondent	: Mr.P.Balasubramanian

O R D E R

This petition is filed as against the impugned order dated 10.07.2019, passed by the Labour Court, Kumbakonam, declining to entertain the petitioner's application filed under Section (2) (A) of the I.D.Act, on the ground of limitation.

2.According to the petitioner, he was appointed as Conductor in the respondent Corporation on 01.11.2007. Subsequently, he was removed from service by the respondent Corporation on 24.09.2014, due to his unauthorized absence from duty. According to him, due to the death of his wife and father on 23.02.2010 and 08.02.2011 respectively, he has to avail leave. Moreover, he underwent surgery for certain ailments, for which, he requested for leave, but that was not granted. While so, the leave taken by the petitioner was treated as absence from duty from 2011 to 2013. An enquiry was conducted in this regard and thereafter, the petitioner was removed from service by the order dated 24.09.2014.

3.The further case of the petitioner is that since an industrial dispute was pending before the Joint Commissioner of Labour (Conciliation), Chennai between the State Transport Corporation, including the respondent and the trade unions relating to wage and other benefits and since the petitioner was the concerned workman in the dispute, the respondent filed approval



petition in A.P.No.216 of 2014, before the Authority seeking approval for the petitioner's dismissal under Section 33(2) (b) of I.D.Act. After enquiry, the authority by its order dated 23.07.2018 in A.P.No.216 of 2014 granted approval for the petitioner's dismissal. Thereafter, he raised Industrial Dispute on 26.11.2018 and the labour Officer gave a failure report dated 20.02.2019. The petitioner raised Industrial Dispute before the Labour Court, Kumbakonam, by claim petition, dated 24.11.2018. The Labour Court, Kumbakonam passed an order, refusing to entertain the claim petition and aggrieved over the same, the petitioner is before this Court with the present Writ Petition.

4.The learned counsel for the petitioner submits that the order of dismissal would come into effect, only after the approval order of the authority under section 33 (2) (b) of I.D. Act. In this case, approval from the competent authority for the order of dismissal was granted only on 23.07.2018 and this claim petition was filed on 26.11.2018. The petitioner has also raised Industrial dispute before the Labour Officer, Thanjavur and the Labour officer has also filed a failure report dated 20.02.2019, since there was no amicable settlement between the parties. The petitioner filed a petition under Section (2) (A) of the I.D.Act, before the Labour Court, Kumbakonam on 24.11.2018 and the same was rejected on the ground of limitation.

5.According to the learned counsel for the petitioner, the petitioner is entitled for the relief, as per the dictum laid down by the Honourable Supreme Court of India in 2002 (1) L.L.N.639, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd Vs.Ram Gopal Sharma and others, wherein, the Honourable Supreme Court has held as follows:-

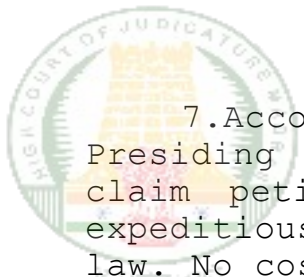
14.Where an application is made under Section 33(2) (b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words,



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this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2) (b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2) (b), Section 33A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

6.Mr.P.Balasubramanian, learned counsel took notice for the respondent. Since the petitioner's claim is covered by the order of the Honourable Supreme Court, this Court is inclined to allow this Writ Petition at the admission stage itself.



7. Accordingly, this Writ Petition is allowed. No costs. The Presiding Officer of the Labour Court, Kumbakonam shall take the claim petition of the petitioner and dispose of the same as expeditiously as possible, on merits and in the manner known to law. No costs.

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Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

The Presiding Officer,
Labour Court,
Kumbakonam.

+1 CC to M/s.P.BALASUBRAMANIAN, Advocate (SR-35248[F] dated 19/11/2021)

ORDER MADE IN
W.P (MD) No.20631 of 2021
18.11.2021

RS (03.12.2021) 4P 3C