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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

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THE HONOURABLE MR.JUSTICE M.S. RAMESH

W.P.No.25351 of 2013
and
M.P.Nos.1 of 2013 & 4 of 2015

The Management,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Villupuram.

...Petitioner

Vs.

1. Assistant Commissioner of Labour (Conciliation),
D.M.S Compund,
Chennai - 06.

2. Thiru S.Karunakaran

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the first respondent made in Approval Petition.No.213/2010 dated 27.12.2012 and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.G.Saravanakumar

For Respondents: Mr.C.Selvaraj
Additional Government Pleader [R1]
Mr.R.Muralidharan [R2]

ORDER

Section 33(2)(b) of the Industrial Disputes Act, 1947, mandates the Management to prefer an application seeking for sanction of approval of the order of dismissal passed by them simultaneously on the date on which the punishment has been imposed.

2.In the instant case, the second respondent/workman was dismissed from service on 30.11.2010 and the application under Section 33(2)(b) was filed on 08.12.2010. This delay of 8 days would be fatal to the Management since the provision requires



such a filing of application to be done simultaneously.

3.The learned counsel for the petitioner/Management made a faint attempt to submit that the application for approval was sent by post on 04.12.2010 which was received by the Authority on 08.12.2010 and therefore, the four days delay can be condoned.

4.I am not in agreement with the above submission. Firstly, the mandate of the provision is for simultaneous filing of an application on the date on which the dismissal order was passed and the delay may not be excusable for entertaining the application. Secondly, the Management had not substantiated such belated filing of an application before the Authority, which has been taken note of in the impugned order. Having failed to establish these factual aspects by way of evidence produced before the Authority, this Court exercising its powers under Article 226 of the Constitution of India will not re-appreciate the evidence before the Authorities.

5.When an Approval Petition under Section 33(2)(b) is rejected, the concerned workman is deemed to have been in service as if he was never dismissed at all and therefore, would be entitled for all the consequential service and monetary benefits.

6.At this juncture, the learned counsel for the second respondent submits that the petitioner has now reached the age of superannuation.

7.Therefore, in the above background, the petitioner/Management is directed to pass necessary orders disbursing all the retirement benefits including the pensionary benefits by considering that the second respondent herein was never dismissed from the services, within a period of four weeks from the date of receipt of a copy of this order.

In the result, this Writ Petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Sni



To

Assistant Commissioner of Labour (Conciliation),
D.M.S Compund,
Chennai - 06.

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+1cc to Mr.G.Saravanakumar, Advocate, S.R.No.10988

+1cc to M/s.R.Muralidharan, Advocate, S.R.No.10701

+1cc to the Government Pleader, S.R.No.11107, 11584

W.P.No.25351 of 2013

PMK (CO)

RGA(17/03/2022)