



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. NO. 8135 OF 2019

AND

W.M.P. NO. 8717 OF 2019

AND

W.M.P. NO. 1061 OF 2022

The Management
Tamil Nadu State Transport Corporation (Salem) Limited
Represented by its General Manager
Bharathipuram, Salem Main Road
Dharmapuri-5.

... Petitioner

-vs-

1. R.Saravanakumar
2. The Special Deputy Commissioner of Labour
D.M.S. Buildings,
Chennai.

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, call for the records pertaining to the order dated 04.11.2016 passed by the Second Respondent in Approval Petition No. 50 of 2014 and quash the same, consequently direct the Second Respondent to approve the order of the Petitioner dated 20.01.2014 dismissing the First Respondent from service.

For Petitioner : Mr. A.Sundaravadhanam

For Respondents : Mr. S.T.Varadharajulu (For R1)

Mrs. C.Sangamithirai (For R2)
Special Government Pleader

O R D E R

Heard Mr. A.Sundaravadhanam, Learned Counsel for the
Petitioner, Mr. S.T.Varadharajulu, Learned Counsel for the



First Respondent and Mrs. C.Sangamithirai, Learned Special Government Pleader for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

WEB COPY

2. The First Respondent, who was employed as conductor, had been terminated from service by the Petitioner by Order in Pa.Mu. No. 121/3111/ T2/ThaNaAPoKa/2013 dated 20.01.2014 on the charge of unauthorized absence. Since conciliation proceedings relating to an industrial dispute between the Petitioner and the Trade Union in which the First Respondent was a member was then pending before the Second Respondent, the Petitioner had made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act' for short) for approval of termination, but it was rejected by order dated 04.11.2016 in A.P. No. 50 of 2014 passed by the Second Respondent. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. It is evident from the impugned order that the Second Respondent has examined the application for approval made by the Petitioner with reference to the relevant aspects stipulated in the decision of the Hon'ble Supreme Court of India in Lalla Ram -vs- D.C.M. Chemical Works Ltd. [(1978) 3 SCC 1], which are as follows:-

- (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held;
- (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;
- (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;
- (iv) whether the employer has paid or offered to pay wages for one month to the employee; and
- (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

4. The Second Respondent came to the conclusion that the requirement in items (i) and (ii), had been satisfied and in respect of the aspects in item (iii), it was held that the records of charges against the employee on earlier occasions had not been produced during the domestic enquiry as to his past conduct before imposing the maximum punishment of dismissal from service. In such circumstances, relying on the decision of this



Court in Tamil Nadu State Transport Corporation (Villupuram Division - 1) -vs- Joint Commissioner of Labour (Conciliation), Chennai [(2011) LLJ 644 (Mad)], it was held that the punishment of dismissal from service was too harsh and an act of victimization. In respect of the aspects in items (iv), it was held that the requirement for item (iv) had not been fulfilled inasmuch as the Petitioner has not produced any proof against the contentions raised by the First Respondent that only part of the one month wages has been paid to him at the time of his dismissal and a balance sum of Rs. 1,596/- and the difference in dearness allowance remained to be paid then. In respect of item (v), as there was a delay of 8 days, it was concluded that the Approval Petition has not been filed within a short span of time.

5. At this juncture, it must be recapitulated here that the Constitution Bench of the Hon'ble Supreme Court of India in Karnataka State Road Transport Corporation -vs- Lakshmiddevamma [(2001) 5 SCC 433] has held that in order to avoid unnecessary delay and multiplicity of proceedings, when an employer seeks approval under Section 33(2)(b) of the Act, leave to lead additional evidence to support the action in the alternative and without prejudice to his rights and contentions has to be made in application itself. In this case, it is seen from para 6 of Form-T that the Petitioner has sought for such leave.

6. It has been held by this Court in Management of Metropolitan Transport Corporation (Chennai) Ltd. -vs- A.Ramesh Babu (Order dated 03.02.2016 in W.P. Nos. 33497 to 33505 of 2015) that if the employer has undertaken to pay the difference in one month wages that may arise in the Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947, and if there is any calculation mistake or any other error, it would not vitiate the termination when the employer makes good the deficit payable. It would follow as a corollary that if there is any difference in wages remaining to be paid, it is incumbent upon the Conciliation Officer to call upon the Petitioner to pay the same to the First Respondent under written acknowledgment before refusing approval for that reason.

7. It is not possible to countenance that the Approval Petition has not been filed within a short span merely because there has been a gap of 8 days from the date of the order of termination and the date on which the Approval Petition was received by the Second Respondent in the absence of any discussion in that regard. It is incumbent upon the Second Respondent to examine as to whether the order had been sent immediately to him after it was passed and if not, whether the reasons for the delay were beyond the control of the Petitioner and arrive at a conclusion on that aspect of the matter.



8. As it is apparent that the exercise in accordance with the procedure required to be followed in the aforesaid binding decisions of the Hon'ble Supreme Court of India and this Court had not been undertaken by the Second Respondent in this case, it would not be possible to uphold the impugned order refusing approval for termination of the Employee.

9. The result of the foregoing discussion is that the impugned order dated 04.11.2016 in A.P. No. 50 of 2014 passed by the Second Respondent, which cannot be sustained, is set aside and the matter is remitted back to the Second Respondent for deciding the matter afresh in the required manner. In order to expedite disposal, the matter shall be listed for hearing before the Second Respondent at 11.00 a.m. on 22.06.2022 when the Petitioner and the First Respondent shall appear in person or through their authorized representative as well as on the subsequent dates to which it is adjourned. If the Second Respondent is not in a position to take up the matter for hearing on that date, it shall inform all parties concerned of the date of hearing to which it is adjourned in the prescribed manner. It shall be ensured by the Second Respondent that there is atleast one effective hearing every week showing progress of the case, that full opportunity of hearing is afforded to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised by them on merits and in accordance with law, that the decision taken is communicated to the concerned parties under written acknowledgment and that proof of such compliance is filed before the Registrar (Judicial) of this Court. Though obvious, it is made clear that while deciding the matter, the Second Respondent shall not be inhibited or influenced by the impugned order, which has been set aside.

10. The First Respondent has filed the miscellaneous petition in W.M.P.No. 1061 of 2022 claiming last drawn wages from the Petitioner under Section 17-B of the Act along with required affidavit stating that he is not gainfully employed elsewhere. Though Learned Counsel for the First Respondent has produced a copy of the e-mail dated 07.01.2022 forwarding a copy of that miscellaneous petitioner to Learned Counsel for the Petitioner, the same has not been controverted and the Petitioner has not produced any material showing the gainful employment of the First Respondent from the time of filing of the Writ Petition. In such circumstances, the First Respondent is entitled to the rate of wages that he was receiving at the time of termination on 20.01.2014 from the time of filing of the Writ Petition on 12.03.2019 till fresh order is passed in A.P. No. 50 of 2014 by the Second Respondent. The arrears that have accumulated for the said amount till April 2022 shall be paid by



31.07.2022 and the monthly payment with effect from May 2022 onwards shall be paid on due dates.

In fine, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Maya

To

1. The General Manager,
Tamil Nadu State Transport Corporation
(Salem) Ltd.,
Bharathipuram Salem Main Road,
Dharmapuri - 5.
2. The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
Teynampet,
Anna Salai,
Chennai - 600 006.

Copy to

1. The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.
2. R.Saravanakumar,
Mathur Post,
Pochampalli Taluk,
Dharmapuri - 635 203.

+1cc to A.Sundaravadhanam, Advocate, S.R.No.25833
+1cc to S.T.Varadharajulu, Advocate, S.R.No.25910
+1cc to the Government Pleader, S.R.No.26154

W.P. No. 8135 of 2019

JPL(CO)
PM/19/05/2022