



WEB COPY

1/7



W.A.No.421/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-04-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.421 of 2023

G.Rajaguru

...

Appellant

-VS-

1.The Management,
rep. by its Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Anna Salai,
Chennai – 600 002.

2.The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
Teynampet,
Chennai- 600 006.

...

Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order,
dated 25.11.2022, passed in W.P.No.16434 of 2017, on the file of this Court.

For Appellant : Mrs.M.D.Leelavathi

For Respondent 1 : Mr.R.Ramanlal,
Addl.Advocate General,
assisted by Mr.R.Balaji.



WEB COPY



For Respondent 2 : Mrs.C.Sangamithirai,
Spl.Govt.Pleader.

JUDGMENT

(By *S.Vaidyanathan,J.*)

This appeal has been preferred by the employee, challenging the order of the learned single Judge, dated 25.11.2022, passed in W.P.No.16434 of 2017, setting aside the order of the authority under the Industrial Disputes Act,1947, rejecting the Approval Petition No.172 of 2014, by an order dated 20.02.2017.

2. The appellant employee joined the services of the respondent management on 07.05.1994 and was dismissed by an order, dated 01.08.2014. He remained absent from duty unauthorisedly for 555 days, for which, after a detailed inquiry, he was dismissed from service. The approval authority went into the question in detail and, in the light of the judgment of the Supreme Court in *Lalla Ram v. D.C.M. Chemical Works Ltd.*, 1978 (3) SCC 1, came to the conclusion that the management had not produced any documents to come to the conclusion as to whether the inquiry was conducted properly or not and, in the absence of documents, the authority came to the conclusion that the inquiry was not conducted properly. With the rest of the issues, the authority granted the relief in favour of the employer and rejected the approval petition.



WEB COPY



3. Challenging the order of the authority, the management preferred the Writ Petition, whereby the order of the authority was set aside, holding that the matter needed to be remanded to the authority concerned for fresh adjudication.

4. In the light of the judgment of the Supreme Court in *John D' Souza v. Karnataka State Road Transport Corporation*, 2019 (18) SCC 47, to the effect that the matter needs to be remanded in case of a defective inquiry and, in the case on hand, the employer has not produced documents and that the inquiry has been conducted, we find that the order of the learned single Judge, interfering with the order of the authority, is perfectly justified. Once the matter is remanded, it is open for the authority to adjudicate the matter based on the documents produced by the parties and allow or reject the approval petition. If the approval is granted, still, it is open for the employee to raise an industrial dispute under Section 2A of the Industrial Disputes Act, 1947, as raising of an industrial dispute is not a bar after grant of approval and that the period, during which the matter was pending in the Court, has got to be excluded for the purpose of computation of three year limitation for raising an industrial dispute. In the process, the litigation will not come to an end. Hence, we are of the view that in order to give a quietus to the matter and that the employee has not attained the age of superannuation and also that the employer wants a cessation of employer-employee relationship, to



WEB COPY

shorten the life of the litigation, we convert the dismissal into one of compulsory retirement, which will take effect from the date of dismissal order passed by the employer and the employee would be entitled to all the benefits that will accrue to him in the light of the modified punishment. Though, normally, this Court would not interfere and modify the punishment, as the employer is a State within the meaning of Article 12 of the Constitution of India, and this Court has, in *Indian Bank, represented by its General Manager, Madras v. K.S.Gurumoorthy and Another*, 1990 (II) LLN 355, has entertained and modified the punishment and given finality to the litigation to bring down the life of the litigation, we are granting the relief.

5. Appellant is also present before this Court and has filed an affidavit, that is scanned below, stating that he is willing to give a quietus to the litigation by accepting the compulsory retirement and forgoing the entire back-wages. The affidavit reads as under :

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Appellate Jurisdiction)

W.A No. 421 of 2023

G.Rajaguru
Tradesman Staff No.T25002
S/o. G.Prabhakaran
No.31, 3rd Block, Mugappair West,
Chennai – 600 037.

..... Appellant

-Vs-

1. The Management
Rep by its Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Anna Salai,
Chennai – 600 002.
2. The Special Deputy Commissioner of Labour,
D.M.S.Complex, IV Floor,
Teynampet,
Chennai – 600 006.

.....Respondents

AFFIDAVIT FILED BY G.RAJAGURU

I , G.Rajaguru, son of Thiru.G.Prabhakaran, aged about 54 years, residing at No.31, 3rd Block, Mugappair West, Chennai – 600 037, do hereby solemnly affirm and sincerely state as follows:

1. I am the Appellant herein and I am well acquainted with the facts and circumstances of the case.

Page No. 1
Corrus:



WEB COPY

2. I submit that I was joined into the Respondent Transport Corporation as a Tradesman on 07.05.1994 and I was discharging my duty without any adverse remarks.
3. I submit that the facts are being so, during the January 2013, I was affected by severe viral fever and obtained medical leave. However the Respondent / Management without considering the facts terminated me from service by an order dated 01.08.2014. During the time, Common Demand issue was pending before the Labour Commission Authority. Hence the Management sought an approval before the Learned Labour Authority in A.P No.174 of 2014. After full trial the Learned Labour Authority rejected the Approval Petition A.P No.172 of 2014 and refused to grant approval by order dated 20.02.2017.
4. I submit that aggrieved by the Approval Petition order, the Respondent / Management has preferred an appeal in W.P No.16434 of 2017 and the same was allowed by the Hon'ble High Court, order dated 25.11.2022 by quashing the Approval Petition order and directed to remand back the issue for fresh adjudication.
5. I submit that, aggrieved by the Writ Petition order, I preferred this Writ Appeal in W.A No.421 of 2023 before the Hon'ble Divisional Bench for justice. The matter has came up for hearing on 27.04.2023, during the time I agree to forego the entire back wages and preferred to retire from service under the Compulsory Retirement without prejudice to the other Terminal benefits including family pension etc.

Page No. 2

Coram:

Therefore I pray this Hon'ble Divisional Bench may kindly accept this Affidavit as part and parcel of this matter and the Writ Appeal may be pleased to allow and thus render justice.

Solemnly affirmed at Chennai

On this the 28th day of April 2023

And signed his name in my presence.

Before me,T. KARAYALAR
3229/CA 134 TC 8

Advocate, Chennai -1



6. In view of the above development, the order of the learned single Judge is modified and the respondent management is directed to settle the terminal benefits, such as Provident Fund, Gratuity, Pension etc., taking into account the punishment of compulsory retirement, for the actual services rendered by the appellant employee between 07.05.1994 and 01.08.2014, within a period of four months from the date of receipt of a copy of this order.

7. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.3888 of 2023 is closed.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
dixit

(S.V.N.,J.) (R.K.M.,J.)
28-04-2023

To

1.The Management,
rep. by its Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Anna Salai,
Chennai – 600 002.

2.The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
Teynampet,
Chennai- 600 006.



WEB COPY

7/7



W.A.No.421/2023

S.VAIDYANATHAN,J.
AND
R.KALAIMATHI,J.

dixit

W.A.No.421 of 2023

28-04-2023