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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.368 of 2023

G.Vadivelu

...

Appellant

-VS-

1.The Management,
Metropolitan Transport Corporation (Chennai) Ltd.,
Anna Salai,
Pallavan Illam,
Chennai – 600 002.

2.The Special Deputy Commissioner of Labour,
DMS Office, 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.9662 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.M.Chidambaram.



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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.9662 of 2017, setting aside the order of the authority under the Industrial Disputes Act,1947, rejecting the Approval Petition No.59 of 2014, by an order dated 29.08.2016.

2. According to the respondent management, the employer has fulfilled all the principles laid down in the decision of the Apex Court in *Lalla Ram v. D.C.M. Chemical Works Ltd.*, 1978 (3) SCC 1; that the learned single Judge was right in setting aside the order of the authority and that the authority was wrong in taking a mechanical decision that the inquiry report was not available and the charges were not proved. It is further contended that even assuming that the inquiry report was not available, the matter needs to be sent back to the authority for fresh consideration and, therefore, in the case on hand, the order of the learned single Judge was correct in interfering with the order of the authority.

3. For the sake of convenience, Section 33 (2) (b) of the Industrial Disputes Act,1947, is extracted below :



"33 (2) (b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

4. In this case, we take it that the management has complied with all the guidelines prescribed in *Lalla Ram's* case, cited supra, except one. The management has sent one month's wages to the employee. It has been reported that the cheque was returned to the management on account of the fact that the employee was not found in the address. From the records, it appears that the employee has presented the cheque in the bank, but the same has been returned on the ground of insufficient funds. As per Section 33, one month's wages have to be paid. Even assuming that the cheque has been despatched on the very same day and the said cheque has been received by the employee including the dismissal order on the subsequent day and that the employer has presented the approval petition on the very same day of dismissal order, in case the funds are not encashed on account of insufficient funds as the cheque got bounced, it cannot be construed that the employee has been paid wages for one month. Hence, on that ground alone, the order of the authority is restored and the order of the learned single Judge is



interfered with.

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5. During the course of hearing, learned counsel for the appellant employee has submitted that the employee is willing to give up 50% of the back-wages up to 30.04.2023. Since the order of the authority has been restored, the employer must continue to pay the employer's and the employee's share to the Provident Fund Trust on the entire wages. However, it is sufficient if the employee is paid 50% of the back-wages and that no amount shall be adjusted from 50% of the back-wages, while contributing towards Provident Fund. In the light of the decision of the Supreme Court in *Tamil Nadu State Transport Corporation v. Neethivalangan, Kumbakonam*, 2001 (9) SCC 99, the employer has to implement the order within a period of four weeks from the date of receipt of a copy of the order. Though the employee is entitled to 100% wages, since he has given up 50% of the back-wages, we make it clear that on and from 01.05.2023, the employee must be deemed to be in service and he shall be paid on par with his counterparts. If the amount of 50% back-wages, mentioned supra, is not paid within the time stipulated above, it will fetch interest at 12% per annum from 01.05.2023. The interest amount shall be paid first and can be recovered from the officers, who are responsible to comply with the orders of this Court, in the light of the decision of the Supreme Court in *Central Co-operative Consumers' Store Ltd. v. Labour Court, H.P. at Shimla and another*, 1993 (3) SCC 214. The appellant employee is also entitled to continuity of service and all the retiral benefits, such as, Pension, Gratuity etc.



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6. Appellant is also present before this Court and has filed an affidavit, that is scanned below, forgoing 50% of the back-wages from the date of termination till the date of reinstatement. The affidavit reads as under :

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

W.A No. 368 of 2023

G.Vadivelu,
Driver EDP No: D54780,
Bajanai Koil Street,
Eayagunan Village (Post)
Gingee Taluk,
Villupuram District.

.....Appellant

//Vs//

- 1) The Management
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai
Chennai - 600 002.
- 2) The Special Deputy Commissioner of Labour,
DMS Complex IV Floor,
Teynampet, Anna Salai,
Chennai - 600 006.

.....Respondents

AFFIDAVIT FILED BY G.VADIVELU

I, G.Vadivelu, son of Mr. Govindasamy, Hindu, aged about 41 years, residing at Bajanai Koil Street, Eayagunan Village (Post) Gingee Taluk, Villupuram District, temporarily came down to Chennai and signed this affidavit and do hereby solemnly affirm and sincerely state as follows:

I. I am the Petitioner herein and Appellant in the Writ Appeal as such I am well acquainted with the facts and circumstances of the case.

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Corrns:

G. Vadivelu



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2. I submit that I was joined into the Respondent Transport Corporation as a Driver on 24.06.2008 and I was discharging my duty satisfactorily without any adverse remarks.
3. I submit that the facts are being so, during the end of November 2012, I was affected by severe Jaundice and I have applied medical leave for 15 days in order to take Siddha treatment at my native place. However the Respondent / Management without considering the facts terminated me from service by an order dated 28.12.2013. 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.59 of 2014. After full trial the Learned Labour Authority rejected the Approval Petition A.P No.59 of 2014 and refused to grant approval by order dated 29.08.2016.
4. I submit that aggrieved by the Approval Petition order, the Respondent / Management has preferred an appeal in W.P No.9662 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.368 of 2023 before the Hon'ble Divisional Bench for justice. The matter has come up for hearing on 27.04.2023, during the time I agree to forego 50% in my entitled back wages alone (from the date of termination i.e from 28.12.2013 to till date) and without prejudice to the other benefits and reinstatement into service with continuity of service.

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Therefore I humbly pray that this Hon'ble Divisional Bench may be pleased to allow this Writ Appeal and may be pleased to direct the Respondent / Management to reinstate me into service with continuity of service 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,
K. Jithuvas
(28/04/2023)
B. No. 28/11/2023
Advocate, Chennai - 600 014



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7. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.3508 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

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To

1.The Management,
Metropolitan Transport Corporation (Chennai) Ltd.,
Anna Salai,
Pallavan Illam,
Chennai – 600 002.

2.The Special Deputy Commissioner of Labour,
DMS Office, IV Floor,
Teynampet,
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