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W.A.No.416/2023

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.416 of 2023

N.Ravi

...

Appellant

-VS-

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

2.The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
Teynampet, Anna Salai
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.13335 of 2018, 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.



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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.13335 of 2018, setting aside the order of the authority under the Industrial Disputes Act,1947, rejecting the Approval Petition No.237 of 2012, by an order dated 14.09.2017.

2. The appellant employee joined the services of the respondent management on 26.04.1993 and was dismissed by an order, dated 11.10.2012.

3. 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.



4. On the other hand, the contention of the appellant employee is that the order of the learned single Judge in setting aside the order of the authority is incorrect and that the entire wages have not been paid.

5. In the present case, there is a shortfall in payment of one month's wages, which goes against the provisions under Section 2 (rr) read with Section 33 of the Industrial Disputes Act, 1947. Further, there is also a delay of 11 days in filing the approval petition. We have already dealt with the said issue with regard to delay in filing the approval petition in W.A.No.32 of 2022, by a judgment, dated 23.12.2022. The relevant paragraph in the said judgment is extracted below :

"9. As far as the contention of the learned counsel for the respondent Corporation based on the decision in Strawboard case, the same cannot be accepted as the said case is against the Management. The Apex Court has considered the word "simultaneously" in the said decision and for the sake of convenience, the relevant portions are extracted hereunder:

"10. The contrary view has been taken by the Calcutta High Court in Metal Press Works Limited v. Deb (H.R.)(1) where it has been held that payment of wages and the making of the application should be simultaneous with the order of discharge or dismissal. It has further been pointed out that 'the word "simultaneously" must of course be taken reasonably and a notion of split-second timing should not be imported. It should be done at once and without delay", and it will depend upon the facts of each case whether the application has been made at once or without delay. This, we think, is the correct view to take. 11. Let us therefore see what has happened in this case, The appellant-concern is situate at Saharanpur while one tribunal was at Meerut and the other at



Allahabad. What the appellant did was to pass an order of dismissal on-February 1, 1960. On the same day he sent two applications by post addressed to the two tribunals. The application at Meerut was received on February 3 and the application at Allahabad on February 4, 1960. In these circumstances we are of opinion that the appellant had made the application to the tribunal simultaneously and without delay on its passing the order of dismissal and its action was therefore in accordance with the proviso. The view taken by the labour court that the application must be made before dismissing the respondent is not correct. The appellant in this case had complied with the proviso to s. 33 (2) (b) when it dismissed the workman, paid him or offered to pay the necessary wages and at the same time sent the application by post to the tribunal concerned for approval of the action taken by it."

In the aforecited case, it is seen that the employer had posted the dismissal order dated 01.02.1960 ON THE VERY SAME DAY and despatched to two Tribunals, one at Meerut and the other at Allahabad and it had reached the two Tribunals on two different dates. The Court had considered the act of the Management in despatching the order of dismissal by post and came to the conclusion that the Management had made the application to the Tribunal simultaneously and without delay on its passing the order of dismissal and had complied with the proviso to Section 33(2)(b) of the Act. However, in the case on hand, we would have accepted the contention of the Transport Corporation if there had been holidays declared for a period of 8 days and the application had been filed subsequently before the Court. There is no iota of evidence that the employer had despatched the dismissal order to the employee concerned in this appeal on the very same day or the very next day and that there was no delay on the part of the employer. When there is a delay in filing the approval application simultaneously, we are of the view that the order of the approval authority is perfectly justified. The learned Single Judge



has observed in paragraph No. 15 as follows:

"15. The last issue to be considered is whether the petitioner herein approached the first respondent within a reasonable time so as to conclude that it is part of the same transaction as the dismissal of the second respondent. In this case, the Enquiry Officer submitted the report on 28.12.2001, the order of dismissal was issued on 04.02.2003 and the application for approval was filed on 13.02.2003. If computed from the date of dismissal, the finding of the first respondent that the application was not part of the same transaction appears to be erroneous on the face of the record."

Even going by the observation made by the learned Single Judge, in the light of the pleadings made by the respondent Corporation, the dismissal order was issued on 04.02.2003 and the application for approval was filed on 13.02.2003. Rule 64 of the Tamil Nadu Industrial Dispute Rules, 1958, more particularly, Rule 64(2) would categorically state that the employer will have to make an application simultaneously. It does not mean that it should be made in a notion of a split second. In this case, admittedly, there is a delay of 8 days and no reason has been given for the delay."

Hence, the order of the learned single Judge in setting aside the order of the authority is liable to be set aside and it is, accordingly, set aside.

6. 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 from the date of termination i.e., from 11.10.2012 till the date of his superannuation i.e., 31.12.2020. Since the order of the authority has been restored, the employer must continue 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. 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 terminal benefits, such as, Pension, Gratuity etc., which shall be paid within a period of four months from the date of receipt of a copy of this order.

7. 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 superannuation. The affidavit reads as under :



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

W.A.No. 416 of 2023

N.Ravi,
Driver – Staff No.D15968,
No.53, V.R.Pillai Street,
Canal Bank, Triplicane,
Chennai-600 005.

..... Appellant

//Nsi//

- 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 N.RAVI

I, N.Ravi, Son of Mr.Narayanan, Hindu, aged about 60 years, residing at No.53, V.R.Pillai Street, Canal Bank, Triplicane, Chennai-600 005 do hereby solemnly affirm and sincerely state as follows:

1. I am the Appellant herein as such I am well acquainted with the facts and circumstances of the case.
2. I submit that I was joined into the Respondent Transport Corporation as a Driver on 26.04.1993 and I was discharging my duty satisfactorily without any adverse remarks.

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Comrs:

3. I submit that the facts are being so, I was affected by Diabetic and Spinal Cord disorder and hence applied medical leave from 21.05.2011. But the Respondent / Management without considering the facts terminated me from service by an order dated 11.10.2012. 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.237 of 2012. After full trial the Learned Labour Authority rejected the Approval Petition A.P No.237 of 2012 and refused to grant approval by order dated 14.09.2017.

4. I submit that aggrieved by the Approval Petition order, the Respondent / Management has preferred an appeal in W.P No.13335 of 2018 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. Further I submit that during the pendency of the Writ Petition, I have attained the age of superannuation i.e on 31.12.2020.

5. I submit that, aggrieved by the Writ Petition order, I preferred this Writ Appeal in W.A No.416 of 2023 before the Hon'ble Divisional Bench for justice. The matter came up for hearing on 27.04.2023, during the time I agreed to forego 50% in my entitled back wages alone (from the date of termination i.e from 11.10.2012 to till the date of my superannuation dated 31.12.2020) without prejudice to the other Terminal benefits including family pension etc.

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Comrs:



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 allowed 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. KARAKIVELAN
3229/09
T34/2021 / Jk an.
Advocate, Chennai

8. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.3859 of 2023 is closed.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
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(S.V.N.,J.) (R.K.M.,J.)
28-04-2023

(4/4)

To

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

2.The Special Deputy Commissioner of Labour,
D.M.S. Complex, IV Floor,
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W.A.No.416/2023

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

dixit

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(4/4)

28-04-2023