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W.A.No. 764 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.764 of 2023
C.M.P.No.7425 of 2023

The General Manager,
Tamil Nadu State Transport
Corporation (Kovai) Ltd.,
Erode Region, Erode.

..

Appellant

-VS-

1. R.Selvaraj

2. The Special Deputy Commissioner of Labour,
DMS Complex, Annasalai,
Chennai- 600 001.

..

Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order
passed by this Court in W.P.No.13402 of 2018 dated 14.02.2020.

For Appellant	: Mr.S.Silambanan AAG-II Assisted by Mr.M.Murali Vinodh
For Respondents	: Mr.V.Ajay Khose (R1) R2-Labour Court



W.A.No. 700 of 2018

J U D G M E N T

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This Writ Appeal has been preferred by the Appellant to set aside the order dated 14.02.2020 passed by this Court in W.P.No.13402 of 2018, in allowing the Writ Petition filed by the Respondent.

2. The 1st Respondent/Workman joined the services of the Appellant/Transport Corporation as a driver on 07.02.1990 and was dismissed from service vide order dated 22.11.2014 on the ground that he was responsible for an accident which occurred on 27.08.2011. As an Industrial Dispute was pending between the Union and the Transport Corporation and as the 1st Respondent/Workman was an interested person in the dispute, the Appellant/Employer filed a petition before the 2nd Respondent/Authority under Section 33 (2)(b) of the Industrial Disputes Act, 1947 (in short 'the Act') seeking approval of the action in dismissing the Workman and the 2nd Respondent, vide order dated 09.01.2018, has rejected the Approval petition on the ground that the enquiry was not conducted in a fair and proper manner.

3. As the Appellant did not reinstate the Workman, the latter filed a Writ Petition in W.P.No.13402 of 2018 praying to implement the order passed by the 2nd Respondent. Similarly, the Appellant/Transport Corporation also preferred a Writ



W.A.No. 700 of 2020

Petition in W.P.No.16901 of 2018, praying to quash the order passed by the 2nd Respondent dated 09.01.2018, in rejecting the Approval Petition filed by the Appellant.

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Both the Writ Petitions were taken up together for hearing and a learned single Judge of this Court, by a common order dated 14.02.2020, dismissed W.P.No.16901 of 2018 filed by the Transport Corporation and allowed W.P.No.13402 of 2018 filed by the Workman and the Appellant was directed to implement the order of the 2nd Respondent within a period of four weeks. Since the above direction was not complied with even after the expiry of time granted for compliance, the Transport Corporation has filed this Appeal, against the order dated 14.02.2020 passed in W.P.No.13402 of 2018, which was filed by the Workman, along with a petition to condone the delay of 1079 days in preferring this Appeal.

4. As per the narrations mentioned supra, it is very clear that the order of the Authority dated 09.01.2018 has become final as no Writ Appeal has been filed against the very same common order dated 14.02.2020, by which W.P.No.16901 of 2018 was filed by the Appellant/ Transport Corporation, was dismissed.

5. When this Court wanted to dismiss this Appeal at the stage of condoning the delay, it was expressed by the learned counsel for the Workman that the Workman has



already attained the age of superannuation on 31.03.2019 and almost 4 years have gone by and by rejecting the petition, he may have to once again seek the remedy before the Labour Forum for getting money and in order to put an end to the litigation, he filed a Memo of the 1st Respondent/Workman dated 24.03.2023 stating that this Writ Appeal may be disposed of in terms of paragraph 11 of the Memo dated 24.03.2023. For the sake of convenience, paragraph 11 of the said Memo is extracted hereunder:

"11. The 1st Respondent/Workman has already reached the age of superannuation on 31.03.2019 itself. Since he has been facing non-employment for the past 9 years and since he has already attained the age of superannuation, he wants to settle the matter amicably with the following terms:

a) The 1st Respondent/Workman agrees to get reinstatement notionally from the date of his dismissal to the date of his superannuation.

b) The 1st Respondent/Workman agrees to forego the entire back wages for the above period after adjustment of both employer and employee contributions for the entire period of non-employment to pension trust and PF, Gratuity, Earned Leave/Sick Leave salary.

c) The 1st Respondent/workman agrees to get pension and other terminal benefits by treating as if he continued in service without dismissal up to the date of retirement, based on the wages payable to him as on the date of his retirement;

d) The 1st Respondent/workman agrees to get PF, Gratuity, Earned Leave/Sick Leave salary accrued upto the date of dismissal and other terminal benefits and pension with arrears from 01.04.2019 within a stipulated time as may be fixed by this Hon'ble Court.

It is therefore prayed that the above writ appeal may be disposed of in terms of para No.11 of this memo.



WEB COPY



W.A.No. 700 of 2019

6. A reading of the Memo would make it very clear that the Workman is willing to give up the entire backwages except for Provident Fund, Gratuity, Earned Leave/Sick Leave salary accrued up to the date of dismissal and other terminal benefits and pension with arrears from 01.04.2019.

7. In view of the above, we are of the opinion that as the workman has given up backwages, it is a bounty to the Corporation. Taking note of the Memo filed by the Workman and the fact that once the Approval Petition is rejected, the employee is deemed to be in service as if there is no order of dismissal in the eye of law in the light of the judgment of the Supreme Court in the case of **Jaipur Zila Sahakari Boomi Vikas vs. Ram Gopal Sharma (2002 (2) SCC 244)**, and that this Court can direct the Management to implement the order of the Authority as has been held in the case of **M.D.Tamil Nadu State Transport Corporation Vs. Neethivilangan Kumbakonam** reported in **(2001) 9 SCC 99**, we direct the employer to pay the employer's and the employee's Provident Fund contribution due to the employee till the age of his superannuation to the Employees Provident Fund Trust, as if he was not dismissed from



W.A.No. 700 of 2022

service, apart from extending Gratuity/Earned Leave/Sick Leave salary accrued upto the date of dismissal and other terminal benefits and pension with arrears from 01.04.2019.

In case, the Workman is entitled to pension, the same may be computed and paid from the date of superannuation viz., 31.03.2019. The Workman has rendered 29 years of service and the arrears of benefits mentioned supra will have to be extended to him on or before **15.06.2023**. The Workman would not be entitled to arrears of backwages alone. We make it very clear that backwages is completely different from arrears of terminal benefits payable to the workman concerned.

8. This Writ Appeal is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [R.K.M., J]
29.03.2023

Index: Yes / No
Internet: Yes / No
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To

The Special Deputy Commissioner of Labour,
DMS Complex, Annasalai,
Chennai- 600 001.



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W.A.No. 764 of 2023

S. VAIDYANATHAN,J.,
and
R.KALAIMATHI.,J

arr

W.A.No.764 of 2023

24.03.2023