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W.A. No.632 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.632 of 2023

G. Neelakandan

Appellant

v

1 Tamil Nadu State Transport Corporation Ltd.
(Villupuram) Ltd.
Vellore Region
represented by its General Manager
Vellore

2 The Joint Commissioner of Labour (Conciliation)
DMS Compound
Teynampet
Chennai 600 006

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 08.11.2019 passed in W.P. No.35298 of 2006.

For appellant	Mr. R.S. Anandan
For R1	Mr. M. Aswin
For R2	Mrs.V. Yamunadevi Special Government Pleader

JUDGMENT

(delivered by S.VAIDYANATHAN, J.)

For the sake of clarity and prolixity, the parties will be adverted to as per their rank in this writ appeal.

<https://www.mhc.tn.gov.in/judis>



2

The germane facts necessary for deciding this writ appeal run thus:

2.1

The appellant joined as a Conductor in the first respondent Transport Corporation on 06.10.1991. Owing to his long absence for various spells, he was dismissed from service on 31.05.2003 and on the date of his dismissal, he had completed almost 12 years of service.

2.2

As there was an industrial dispute pending between the Management and the Union and the appellant was one of the workmen concerned in the industrial dispute, an approval petition was filed by the first respondent Transport Corporation in A.P. No.197 of 2003, in which, the second respondent authority, *vide* order dated 12.02.2005, holding that Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958 has not been followed, rejected the approval petition and the relevant paragraphs from the said order read thus:

“The next issue to be decided is whether the applicant 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. The application seeking approval of the dismissal of the opposite party was filed on 08.06.2003. Ex.A.1 indicates that the opposite party was dismissed on 31.05.2003. Therefore, I reckon 08.06.2003 as the date on which the application seeking approval was filed before this authority. The opposite party had been dismissed by an order dated 31.05.2003. The time gap between the date of dismissal of the opposite party and the filing of the application seeking approval is only about eight days. The time gap between the two actions is so short that they could be regarded as forming part of the same transaction. Therefore, I decide accordingly. However, Rule 64(2) of the Tamil Nadu Industrial Dispute Rules, 1958, reads as follows:



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“64(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, of any action taken by him under clause (a) or clause (b) of sub-section (2) of section 33, shall present an application in Form “T” in duplicate to such Conciliation Officer, Board, Labour Court or Tribunal either personally or by registered post with acknowledgment due. A copy of it shall also be served simultaneously either personally or by registered post acknowledgment due on the workman or workmen concerned and the fact indicated on the copies of the application presented to the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be.”

In its application in Form T prescribed under Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958, seeking approval of the dismissal of the opposite party, the applicant had indicated that copies have been served simultaneously by registered post on the opposite party as required by sub rule (2) of Rule 64 and the acknowledgment of the opposite party will be filed as soon as it is received. Exhibit A.5 is described by the applicant as the acknowledgment given by the opposite party for receiving the dismissal order. It is not described as acknowledgment given for receiving Form T prescribed under Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958. The applicant had not produced for my perusal any document indicating that the Form T had been sent to the opposite party. Therefore, I am constrained to hold that the applicant had not served on the opposite party form T as required by Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958. As this also amounts to a contravention of a rule framed under a statute, I hold that approval has to be refused on this ground also.

I reject the application seeking approval for the dismissal of Thiru. G. Neelakandan, Conductor, Staff No.9834 for the following reasons:

1 While dismissing the opposite party from its services, the applicant had not followed the principles of natural justice.

2 A *prima facie* case based on legal evidence had not been made out in the enquiry.

3 While dismissing the opposite party from its services, the applicant had not followed the mandatory conditions of Section 33(2)(b) of the Industrial Disputes Act, 1947, read with Rule 64(2) of the Tamil Nadu Industrial Disputes Rules, 1958.”



2.3 Challenging the aforesaid order of the second respondent authority, the first respondent Transport Corporation filed a writ petition being W.P.No.35298 of 2006, which was allowed by a Single Bench *vide* order dated 08.11.2019, on the ground that second respondent authority cannot decide the quantum of punishment with reference to the proportionality theory.

2.4 Thereagainst, the workman has preferred this writ appeal.

3 Heard the learned counsel for the parties and perused the materials available on record.

4 From a perusal of the the records, it is quite manifest that the appellant workman was not regular in his work. Though we find that this is a fit case for remand, in order to shorten the life of litigation and since the appellant had absented himself for more than six years during his service period of 12 years, he is not a fit person to be continued in service, we posed a question to the appellant workman and the first respondent Transport Corporation as to whether the punishment of dismissal from service could be converted into one of compulsory retirement. At the same time, we are of the view that on technicalities, some relief has to be granted to the appellant workman as the order of the authority under Section 33(2)(b) of the Industrial Disputes Act, 1947, is tested before us.

<https://www.mhc.tn.gov.in/judis> 5 The learned Standing Counsel for the first respondent Transport



Corporation produced before us a communication dated 22.07.2023 stating that the first respondent Transport Corporation is willing to impose the punishment of compulsory retirement and pay a sum of Rs.2,74,919/- towards full and final settlement, by taking into account his service of 7 years, 2 months and 20 days as his pensionable service.

“Anent the 2nd ref. cited, you have requested the Management to consent to provide compulsory retirement on the date of dismissal in respect of Thiru. G. Neelakandan., Ex. Cond. Staff No.9834.

In this connection, it is to state that we have given consent for compulsory retirement on the date of removal (i.e. 31.05.2003)

Tentative Commitment if we give compulsory retirement on the date of dismissal.

Pensionable service:

7 years, 2 months and 20 days (Pension not eligible)

TERMINAL BENEFITS	
Gratuity	Rs.20,307/-
Leave liability (excess leave availed)	Rs. Nil
I.R.T. Contribution	Rs. 2,500/-
P.F. Amount as on 31.03.2022	Rs.2,52,112/-
Total Commitment	Rs.2,74,919/-

6 Be it noted, the rationale behind we suggesting the first respondent Transport Corporation to convert the punishment of dismissal from service into one of compulsory retirement is to ensure that the appellant workman gets his terminal benefits. If the order of the second respondent authority is upheld by us,



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the first respondent Transport Corporation will have to pay not only pensionary benefits, but also entire backwages as if there was no order of dismissal in the eye of law. As the first respondent Transport Corporation has agreed for conversion of punishment of dismissal from service into one of compulsory retirement which will take effect on the date of the dismissal order, *i.e.*, 31.05.2003, in order to give a quietus to the matter, the entire period of about 12 years from 06.10.1991, being the date of his appointment, till 31.05.2003, being the date of his dismissal, is ordered to be taken as qualifying service for the purpose of pensionary benefits. Arrears of pension shall be paid within a period of four months from the date of receipt of a copy of this judgment. The other terminal benefits like Gratuity and Provident Fund, if any, shall be paid to the appellant workman for the actual service rendered by him which works out to approximately 8 years and not 12 years.

This writ appeal stands disposed of in the above terms. No costs.

(S.V.N., J.) (K.R.S., J.)
26.07.2023

cad



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To

- 1 The General Manager
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Vellore Region
Vellore
- 2 The Joint Commissioner of Labour (Conciliation)
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