



W.A.No. 940 of 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.940 of 2023

C.Shanmugam

...

Appellant

-VS-

1. The Management of
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.

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Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 25.11.2022 passed by this Court in W.P.No.21177 of 2019.



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For Appellant : Mr.S.T.Varadarajalu

For Respondents : Mr.Ramanlaal (R1)
Additional Advocate General
assisted by Mr.C.Gauthamaraj
Mr.P.Ganesan (R2)

J U D G M E N T

This Writ Appeal has been preferred by the workman to set aside the order dated 25.11.2022 passed by this Court in W.P.No.21177 of 2019, setting aside the order dated 28.11.2018 passed by the 2nd Respondent in A.P.No.154 of 2014.

2. The case of the Appellant/Workman is that he was appointed as a Driver in the first respondent Transport Corporation on 01.10.1996 and he was unauthorizedly absent for duty with effect from 25.12.2012 and in this regard, a complaint was received from the Perambur Depot on 04.01.2013. Based on the said complaint, a Charge Memo was issued to the appellant/workman on 22.03.2013, for which he did not give any explanation and hence, domestic enquiry was ordered to be conducted. The appellant/workman did not participate in the enquiry. Based on the enquiry officer's report and past service record of the appellant/workman, a 2nd Show Cause notice was issued to him on 17.12.2014, for which he did not choose



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to give any explanation and thereafter, he was terminated from service on 23.08.2014.

As there was common dispute pending before the Special Deputy Commissioner of Labour, Teynampet, the Management preferred an Approval Petition in A.P.No.154 of 2014 on 02.09.2014 before the 2nd Respondent which was rejected on 28.11.2018. Being aggrieved over the same, the Transport Corporation preferred W.P.No.21177 of 2019 before this Court and a learned Single Judge of this Court, *vide* order dated 25.11.2022, has allowed the Writ Petition, challenging which, the present Intra Court Appeal has been filed by the Workman.

3. Heard both sides. Perused the records.

4. The admitted facts are that the Workman joined the services of the 1st Respondent Corporation on 01.10.1996 and he was dismissed from service on 23.08.2014. As the Industrial Dispute between the Management and the Workman was pending, the Management approached the Authority for seeking approval of their action in dismissing the Workman from service. During the pendency of the proceedings before the Authority, the Workman attained the age of superannuation on 30.04.2017 and the Authority, by following the dictum of the Supreme Court in the case of ***Lalla Ram Vs. DCM Chemical Works Ltd*** reported in (1978) 3 SCC 1, framed issues and



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rejected the Approval Petition on various grounds, more so, the application for Approval was not filed in time and that there was a delay of 11 days. Aggrieved by the same, the Management has preferred the Writ Petition and the learned single Judge allowed the Writ Petition and remanded the matter to the Authority for fresh disposal, with liberty to the parties to submit additional documents and evidence available with them.

5. A Division Bench of this Court, in which one of us (**SVNJ**) was a member, in W.A.No.32 of 2022, *vide* judgment dated 23.12.2022, has categorically held that, if there is a delay in filing the Approval Petition, that itself is suffice to reject the Approval Petition, more so in the light of the provisions under Section 33 r/w Rule 64 (2) of the Tamil Nadu Industrial Dispute Rules, 1958. Therefore, the order of the learned Single Judge in remanding the matter needs to be interfered with as the Authority has rightly followed the dictum of **Lalla Ram** case mentioned supra.

6. The learned counsel appearing for the Workman submitted that the workman had rendered 18 years of unblemished service and had attained the age of superannuation on 30.04.2017 and that he is willing to give up entire backwages for the non employment period from 23.08.2014 to the date of superannuation i.e., to



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30.04.2017 and the Employer's share of P.F.Contribution to the pension trust may be paid by the Respondent Corporation to treat the non employment period as pensionable service. An affidavit dated 28.04.2023 has also been filed to that effect.

7. The Appellant appeared in person before this Court and he is willing to give up the entire backwages.

8. Since the Appellant/Workman has given up the entire backwages, he shall be deemed to be in service as if no order of dismissal is passed till the date of superannuation. However, the wages he would have drawn on the date of superannuation should be notionally calculated and he shall be paid pensionary benefits from the date of superannuation. The arrears of pension from 30.04.2017 shall be paid within a period of four months from the date of receipt of a copy of this order and the entire period of service shall be taken into account for the purpose of calculating gratuity and Provident Fund and while calculating the amount of gratuity and pension, the actual period of service, *i.e.*, 01.10.1996 till 30.04.2017 will have to be taken into account.



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9. The order of the learned Single Judge dated 25.11.2022 is set aside and the this Writ Appeal stands disposed of. No costs.

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[S.V.N., J.] [R.K.M., J]
28.04.2023

Index: Yes / No
Internet: Yes / No
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