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WA No. 2204 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 2204 of 2022
and
CMP. No. 16501 of 2022

The General Manager
Tamil Nadu State Transport Corporation
(Villupuram) Limited
represented by its General Manager
Kancheepuram Region
Ponnerikarai
Bengaluru National Highways
Kancheepuram - 631 552

.. Appellant

Versus

1. R. Thanigaivel

2. The Special Joint Commissioner of Labour
D.M.S. Campus
Anna Salai, Chennai

.. Respondents

Writ Appeal filed under Clause 15 of The Letters Patent against the order dated 29.07.2021 passed in Writ Petition No. 13444 of 2021 on the file of this Court.

For Appellant : Mr. T. Chandrasekaran

For Respondents : Mr. N. Ishak for R1



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JUDGMENT

[Judgment of the Court was delivered by R. MAHADEVAN, J]

Aggrieved by the order dated 29.07.2021 passed by the learned Judge in Writ Petition No. 13444 of 2021, the appellant / Transport Corporation has come forward with this intra-court appeal.

2. A few facts, which are germane and necessary for disposal of this appeal, would run thus:

2.1. The first respondent was appointed as Driver in the appellant Transport Corporation on 24.04.2008. On 21.07.2013, while he was on duty, he went to start the bus bearing Regn. No. TN 21 N 0168 and hit a person, who was in between the two buses bearing Regn.Nos.TN21 N 1068 and TN 32 N 2258, attempted to cross, as a result of which, the said person got head injury and died, despite treatment. In this connection, the appellant issued an order of suspension dated 23.07.2013, suspending the first respondent from service. However, the appellant cancelled the order of suspension on 25.09.2013 and ordered to impart refresher course to the first respondent. Thereafter, on 02.08.2013, a charge memo was issued by the appellant, for which an explanation was sent by the first respondent denying the charges. Being dissatisfied with the same, an enquiry officer was appointed, who



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conducted enquiry and filed his report on 24.01.2014. Enclosing a copy of the enquiry report, the appellant sent a further notice dated 27.01.2014, to which the first respondent submitted his explanation. After issuing second show cause notice about the proposed punishment, an order dated 12.05.2014 was passed dismissing the first respondent from service and a petition in AP.No.131 of 2014 under Section 33(2)(b) of the Industrial Disputes Act, 1947, was filed before the second respondent / Special Joint Commissioner of Labour, Chennai, seeking approval of the said order of dismissal.

2.2. On notice, the first respondent filed a counter affidavit stating that the enquiry conducted by the enquiry officer was improper and it has caused prejudice to him. According to the first respondent, at the time of accident, three persons have attempted to cross the bus in which one of them suffered injury. However, the management did not take any effort to enquire those two persons, who are competent to depose as to the manner in which the accident had occurred. In any event, there was no negligence attributable on the part of the first respondent in starting the bus and the accident had occurred due to the fault on the part of the deceased. The first respondent also referred to the judgment dated 04.03.2015 passed by the Judicial Magistrate, Kancheepuram in CC No. 435 of 2013, in connection with the aforesaid accident, acquitting him of all the charges and stated that he cannot be blamed for the accident. It



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was also stated by the first respondent that while dismissing him from service, as per Section 33 (2) (b) of the Industrial Disputes Act, 1947, one month wage has to be paid, but the appellant / Transport Corporation had issued a cheque only for Rs.14,365/- and the salary amount, which was agreed to, in the talks between the Trade Union and the Management, was not paid to him along with the order of dismissal. Therefore, the order of dismissal is bad for non-compliance of the statutory procedures.

2.3. Before the second respondent / Special Joint Commissioner of Labour, Chennai, both sides did not adduce any oral evidence. However, Exs.P1 to P11 documents were marked on behalf of the appellant / Transport Corporation and Exs. R1 and R2 documents were marked on the side of the first respondent. The second respondent, after due contest and based on the available evidence, arrived at a conclusion that the domestic enquiry has not been conducted by the appellant by following the standing orders of the Corporation and in accordance with the guidelines issued by the Honourable Supreme Court in ***Lalram v. DCM Chemical Works [AIR 1978 SC 1004]***. In effect, it was concluded by the second respondent that the domestic enquiry has been conducted in violation of principles of natural justice. It was also held that the decision taken by the appellant / Transport Corporation to dismiss the first respondent from service, was anti-labour policy, which cannot be



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sustained. Accordingly, the second respondent refused to accord approval for the order of dismissal passed by the appellant against the first respondent and ultimately, rejected the approval petition on 23.07.2018.

2.4. Aggrieved by the aforesaid order dated 23.07.2018 passed by the second respondent in A.P.No.131 of 2014, the appellant / Transport Corporation has filed the Writ Petition No.13444 of 2021 before the writ Court.

2.5. The learned Judge, on consideration of rival submissions, concluded that the past service of the first respondent is very bad inasmuch as he had caused two fatal accidents and in the earlier one, 64 passengers of the vehicle have suffered injuries. The learned Judge further held that if the second respondent was of the view that enquiry was not conducted in a manner known to law, it ought to have remanded the matter for conduct of enquiry afresh and ought not to have refused to grant approval for the order of dismissal. Holding so, the learned Judge set aside the order of the second respondent and allowed the writ petition. However, the learned Judge directed the appellant / Transport Corporation to pay wages from the date of rejection of the approval petition till the said rejection order is set aside by the writ court. The relevant portion of the order passed in the writ petition, is profitably extracted below:

"11. Even though Section 17-B of the Industrial Disputes Act, 1947 is not applicable to the order passed by the Authority under Section 33(2)(b) of the Industrial Disputes Act, 1947, this Court is of the view



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that, the order passed by the Authority under Section 33(2)(b) of the Industrial Disputes Act is more than one of reinstatement. Since the Approval Petition has been rejected by the Authority, the 1st Respondent/employee is deemed to be in service, in the light of the judgment rendered by this Court in the case of *Tata Iron and Steel Company Ltd. vs. G. Ramakrishna Ayyar* reported in 1950 LLJ 1043. For better appreciation, relevant portion of the said judgment is extracted hereunder:

“4. It is next contended by Mr. Ramakrishna Ayyar that, in any event the order of the Commissioner was bad insofar as it directed a reinstatement in service of the first respondent. The argument was that, there is no specific provision in the Act which enabled the Authority to make an order of reinstatement. He referred us by way of analogy to the jurisdiction of Industrial Tribunals to make orders of reinstatement, but, we think such reference is wholly irrelevant. To a certain extent we agree with the learned counsel, namely, that the Authority should not have said that the employee would be entitled to reinstatement. But this is only quarrelling with his language. Actually the legal position is this. The employer passes an order dispensing with the services of an employee. That order is carried on appeal to a higher Authority. That Authority reverses the decision of the employer and the result is that, the order of the employer is set aside. It is no longer in existence. It follows that, the effect of the original order of the employer also disappears and it is as if the order is nonest. Though, therefore, it may not be quite accurate to say that the employee will be entitled to reinstatement in service, yet the result of the order of the Appellate Authority is virtually the same. Probably, the result is that, the appellate order is even better than an order of reinstatement. It is as if the employee had never been properly dismissed from service. In this view, it is not necessary to quash the order of the appellate authority even in this respect.”

12. In view of the decision rendered in *Tata Iron and Steel Company's case* (supra), as the 1st Respondent/employee is deemed to be in service on account of rejection of Approval Petition, he is entitled to wages from the date of rejection of the Approval Petition till the said order is set aside by this Court, i.e. till today.

The Writ Petition is allowed on the above terms. No costs. Consequently, connected W.M.P.Nos.14321 and 14322 of 2021 are closed.”



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aforsaid order of the learned Judge and hence, preferred this intra-court appeal, challenging the portion of order granting wages for the period from 23.07.2018 to 29.07.2021 to the first respondent treating it as deemed to be in service.

3. The learned counsel appearing for the appellant / Transport Corporation would contend that the learned Judge, having found that the past record of the employee is bad, and having set aside the order dated 23.07.2018 passed by the second respondent in AP No. 131 of 2014, ought not to have granted service status and wages from 23.07.2018 to 29.07.2021, as the second respondent while passing the order of rejection for approval of dismissal, has not granted the relief of reinstatement to the first respondent. Adding further, the learned counsel submitted that the learned Judge ought not to have granted liberty to the first respondent / employee to raise an Industrial Dispute under Section 2 (A) of the Act, before the competent forum. Thus, according to the learned counsel, the order of the learned Judge to that extent, is illegal, contrary to law and against the principles of “no work no pay” and hence, the same will have to be set aside.

4. Per contra, the learned counsel for the first respondent would



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contend that the effect of the order passed by the second respondent, refusing to accord approval for the order of dismissal, would amount to reinstatement of the first respondent in service. Therefore, the learned Judge, in the light of the decision of the Honourable Supreme Court in *Tata Iron and Steel Company Limited v. Ramakrishna Ayyar [1950 LLJ 1043]* has rightly directed the appellant to pay wages from the date of dismissal of the approval petition till the date of the order passed in the writ petition. It is also submitted that while setting aside the order of the second respondent refusing to grant approval for dismissal, the learned Judge has granted liberty to the first respondent to approach the court concerned against the dismissal order, as per law. Therefore, such an order passed by the learned Judge is proper and the same need not be interfered with by this court.

5. We have heard the learned counsel for the appellant as well as the learned counsel for the first respondent and also perused the materials available on record.

6. It is seen that after the domestic enquiry, the first respondent was dismissed from service on 12.05.2014. Seeking approval for the same, the appellant / Transport Corporation preferred AP.No.131 of 2014 before the



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second respondent / Special Joint Commissioner of Labour, Chennai, who by order dated 23.07.2018, refused to grant approval for the order passed by the appellant, as the domestic enquiry was not conducted in accordance with law. The order of the second respondent was questioned by the appellant before the writ court. The learned Judge, after having noticed that it is not the isolated or lone incident in which the first respondent had indulged in the acts prejudicial to the interest of the appellant / Transport Corporation and he had also caused two fatal accidents and in one of the accidents, 64 passengers of the vehicle suffered injuries, set aside the order dated 23.07.2018 passed by the second respondent and accordingly, allowed the writ petition filed by the appellant / Transport Corporation. However, the learned Judge concluded that the first respondent is entitled for wages from the date of rejection of the approval petition i.e., on 23.07.2018, till the date on which the said rejection order is set aside by the writ court i.e., on 29.07.2021, treating the same as his service period. The learned Judge also observed that if the first respondent / employee raises an Industrial Dispute under section 2-A of the Act, the period during which the matter is pending before the court will have to be excluded, including the period of delay on the part of the management in filing the writ petition. Aggrieved by the said portions of the order, the appellant Transport Corporation is before this court with the instant appeal. It is relevant to point



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out at this juncture that no appeal was filed by the first respondent / employee against the order of the learned Judge.

7. It is the specific case of the appellant Transport Corporation that following the principles of “no work no pay”, the first respondent is not entitled for wages from 23.07.2018 to 29.07.2021, as he was dismissed from service with effect from 12.05.2014, which was approved by the learned Judge, by setting aside the order of rejection passed by the second respondent / Special Joint Commissioner of Labour, Chennai. On the other hand, it is contended on the side of the first respondent that once the approval petition for dismissal order passed by the appellant was rejected by the second respondent, the first respondent / employee is entitled to be provided with employment, whereas the appellant failed to reinstate the first respondent in service and hence, the learned Judge ordered wages for the period from the date of rejection of the approval petition to till the date of setting aside the said rejection order by treating it as service period.

8. This Court finds some *bona fide* in the contention so made by the learned counsel for the first respondent. Taking note of the provisions of law as well as the legal principles laid down in the decision of the Hon'ble Supreme



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Court in *Tata Iron and Steel Company case (cited supra)*, the learned Judge has correctly come to the conclusion that as the approval petition is rejected by the authority, the first respondent is deemed to be in service and therefore, he is entitled to wages from the date of rejection of the approval petition till the said order is set aside by the court.

9. At this stage, it is pertinent to point out that through the affidavit dated 20.04.2023 filed by the learned counsel for the first respondent, during the course of hearing, the first respondent undertakes to forego the backwages from 23.07.2018 till 29.07.2021 payable to him by the appellant Transport Corporation, if he is given reappointment with pay protection.

10. Recording the affidavit so filed by the first respondent, this court, in order to give quietus to the issue involved herein, directs the appellant to consider the claim of the first respondent and pass orders, either to pay wages or to provide him any job other than driver, on the basis of the affidavit dated 20.04.2023 filed by the first respondent as referred to above. Such an exercise shall be completed by the appellant after providing an opportunity of personal hearing to the first respondent, within a period of eight weeks from the date of receipt of a copy of this judgment.



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11. Accordingly, the writ appeal stands disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

[R.M.D., J]

[M.S.Q., J]

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Index : Yes / No

Internet: Yes / No

To
The Special Joint Commissioner of Labour
D.M.S. Campus
Anna Salai, Chennai



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