



W.P.No.14797 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.03.2023
Pronounced on	19.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.14797 of 2021

and

W.M.P.Nos.15679, 17074 & 17075 of 2021

The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Cuddalore Regional Office,
Cuddalore-607 006.

... Petitioner

Vs.

K.Ramamoorthy

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorari, calling for the records pertaining to the order dated 15.03.2021 passed by the Labour Court, Cuddalore in Claim Petition No.21 of 2019.

For Petitioner : Mr.M.Aswin

For Respondent : Mr.R.Muralidharan



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O R D E R

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The respondent herein, while serving under the petitioner / Corporation was levelled with certain charges under a charge memo dated 09.01.2016. Consequently, an inquiry was conducted and through the inquiry report dated 22.04.2016, the charges were held to be proved. In view of the proven charges, the petitioner / Corporation had dismissed the respondent through an order dated 18.07.2016. Initially, the respondent had challenged the order of dismissal before the Labour Court, Cuddalore in I.D. No.34 of 2016 on 05.10.2016. However, since the respondent was of the view that the order of dismissal is invalid, in the absence of an application under Section 33 (2)(b) of the Industrial Disputes Act, 1947 [hereinafter referred to as "ID Act"], he had withdrawn I.D.No.34 of 2016 on 06.08.2019. Consequently, he had filed an application under Section 33 (C) (2) of the ID Act in C.P.No.21 of 2019, claiming that the order of dismissal dated 18.07.2016 was bad in law and sought for payment of back wages and other monetary benefits. The Labour Court, Cuddalore, through its order dated 15.03.2021 had computed the Claim Petition and held that the respondent was entitled to receive a sum of Rs.5,13,355/- towards back wages, which order is put under challenge in the present Writ Petition.



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2. Heard Mr.M.Aswin, learned counsel for the petitioner and Mr.R.Muralidharan, learned counsel appearing on behalf of the respondent.

3. The only ground raised by the petitioner / Corporation in the present Writ Petition is that, there was no industrial dispute pending on the date when the respondent was dismissed from service and therefore, no approval of the authority was required under Section 33 (2) (b) of the ID Act. Such a stand seems to be a factual mistake.

4. The respondent has produced a copy of a conciliation failure report in Na. Ka. No.173 of 2016 dated 06.02.2017, which evidences that the Tamil Nadu State Transport Corporation Employees' Union (CITU) had given an application dated 12.04.2016 before the Labour Officer, Cuddalore touching upon the respondent's claim for payment of salary for 29 days leave. The dismissal order was passed on 18.07.2016. Apparently, such an order was passed when the aforesaid dispute was pending before the Conciliation Officer, between 12.04.2016 and 06.02.2017.



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5. The proviso to Section 33 (2) (b) of the ID Act provides that, no workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. In view of the pendency of the conciliation proceedings, which touches upon the service conditions of the respondent herein, the petitioner / Corporation ought to have filed an Approval Petition under Section 33 (2)(b) before the concerned authority, which they failed to do. In view of the same, the dismissal order itself is illegal and void and the respondent is deemed to have continued in service from the date of his removal i.e., on 18.07.2016. In this factual background, the claim made by the respondent before the Labour Court, Cuddalore in his application filed under Section 33 (C) (2) of the ID Act, is legally sustainable.

6. The petitioner / Corporation has not questioned the computation made by the Labour Court, Cuddalore and thus, the impugned order, determining the back wages payable to the respondent at Rs.5,13,355/- is valid.



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7. For all the aforesaid reasons, I do not find any infirmity in the impugned order dated 15.03.2021 passed by the Labour Court, Cuddalore in C.P.No.21 of 2019. Hence, the Writ Petition stands dismissed. In view of the dismissal of the present Writ Petition, the petitioner / Corporation shall forthwith pay Rs.5,13,355/- as computed by the Labour Court in C.P.No.21 of 2019 dated 15.03.2021, within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

19.04.2023

Index : Yes
Order : Speaking
Neutral Citation : Yes

DP

To

- 1.The Labour Court,
Cuddalore.
- 2.The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Cuddalore Regional Office,
Cuddalore-607 006.

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M.S.RAMESH,J.

DP

ORDER MADE IN

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