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W.A.No.3107 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No. 3107 of 2021 and

C.M.P.No.21563 of 2021

The Management,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam,
Anna Salai, Pallavan Salai,
Chennai- 600 002.

... Appellant

-VS-

Mr.V.Selvamani

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the orders passed by this Court in W.P.No.33967 of 2019 dated 2.11.2020.

For Appellant : Mr.M.Chidambaram

For Respondent : Mr.Malaikannan



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J U D G M E N T

WEB COPY (Judgment of this Court was delivered by S.VAIDYANATHAN, J)

The Appellant-Transport Corporation (hereinafter referred to as 'the Management') has preferred this Writ Appeal questioning the order of the learned Single Judge dated 02.11.2020 passed in W.P.No.33967 of 20180, by which, the major punishment of removal from service, which was set aside by the Labour Court, was upheld.

Facts as put forth by the Respondent/Workman:

2. The Workman was appointed as a Driver in the Management on 21.11.1996 and a charge memo dated 30.05.2001 was issued against him, citing the reason of his unauthorised absence for a period of 8 days continuously, with a direction to report for work with medical certificate and explanation to the charge memo. Though the Workman submitted his explanation on 25.07.2007, not satisfied with the same, the Workman was removed from service by an order dated 17.11.2007;

2.1. Aggrieved by his dismissal, the Workman preferred an appeal before the Appellate Authority, in which he did not get any favourable order. Moreover, the



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Management neither obtained any approval for removal of the Workman nor paid wages for one month as per the provisions adumbrated under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947') and there was a common dispute pending before the Labour Officer, in which the Workman was one of the parties, which is evident from Ex.W3 and the dispute was resolved only on 05.09.2013.

2.2. It was reiterated that even without filing an approval petition, the Management had made the order to become final, which is against the judgment of Constitution Bench of the Supreme Court in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd Vs. Ram Gopal Sharma and Others** reported in **(2002) 2 SCC 244**. Subsequently, the Workman had raised an Industrial Dispute, questioning the removal from service.

3. The main plea taken by the Management is that the Workman was absent continuously for a period of eight days without prior permission for which a Charge Memo came to be issued and after following due process of law, he was imposed with the punishment, taking into account the past record of punishments numbering 10.

4. Mr.M.Chidambaram, learned counsel appearing for the Management has



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submitted that the Workman was directed to report for duty by communication dated 19.10.2019 during the pendency of the dispute and he failed to do so. When a question was posed to him during cross examination as to whether he was willing to join duty, without prejudice to his rights, there was no positive reply from him. Therefore, it was vehemently argued that the Award of the Labour Court, which has been confirmed by the learned Single Judge, is liable to be set aside.

5. Heard learned counsel appearing on either side. Perused the records.

6. It is seen that consequent to the continuous absence from duty, the Workman was issued with a charge memo and not being satisfied with the explanation offered by him, disciplinary action was initiated against him and thereafter, he was removed from service. As per the affidavit of the Management dated 22.01.2022, it is apparent as to the pendency of common dispute during termination of the Workman. For the sake brevity, the relevant passage of the affidavit is extracted hereunder:

“3. According to Rule when the common dispute was pending before the Labour Officer, the management may not be have any right to terminal the employee without getting approval from the Labour Officer. If the management did not get the approval, the employee service in the non-employment period to be treated as duty period. According to the rule, the



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petitioner is entitled to get backwages in the non employment period 11.07.2007 (Termination Order) to 29.05.2013) ID filing date.”

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7. It was stated by the Workman that he had filed Ex.W3 to establish that a collective Dispute was pending between the Management and the Workman. The Management had also not filed any petition, seeking approval of the dismissal order.

8. A plea was taken on the side of the Management that inspite of repeated requests, it was the Workman, who had not turned for duty and that there was a delay of six years in raising the Industrial Dispute and therefore, the Workman is not entitled to any relief.

9. We are of the view that if there is any delay in raising the dispute, it is for the Court to decide the dispute with regard to depriving backwages and not to decide the case of termination of a Workman based on technicalities. As per the amended Section 2-A of the Industrial Disputes Act, 1947, which came into force vide Notification No.2278 (E) dated 15.09.2010, there was a direct access provided for an individual to approach the Labour Court or Tribunal to question his retrenchment, discharge, dismissal, termination of services, etc. and in that event, there will be no need for the individual to approach the 'appropriate Government' for getting a reference. There is no



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need for sponsorship for the Union to raise a dispute. Individuals collectively can raise a dispute questioning the non employment, termination and retrenchment etc., in the light of the decision of this Court in *Workmen of Brooke Bond India Limited Vs. Industrial Tribunal* reported in **(1989) 2 LLN 699**, wherein the Division Bench of this Court has considered the issue with regard to the espousal of cause of affected workmen, wherein 120 casual workmen out of the total strength of 735 workers demanded permanency and that two Unions did not expose the cause and the Management wants to throw out the reference. The Division Bench has held that it must be a collective dispute and that alone constitute an industrial dispute. The concept of collective dispute should not be construed to mean that all the workmen of the management or a majority of them should sponsor and support the dispute. It would be sufficient, if the industrial dispute has the support of a substantial body of the workmen concerned in the management. The Industrial dispute could be raised even by a minority union or even by an unrecognized/unregistered union. In *Sri Rajagopal Vs Labour Court, Madurai and Ors* reported in **(1980) ILLJ 351 Mad**, by referring to the decision in *National Asphalt Products Constructions Co. Vs. N.M. Kothari and others* reported in **1977-II L.L.J. 377**, this Court has held that after introduction of Section 2A of the Act in 1965, the role of the Union is unnecessary for espousing the case falling under Section 2A. The relevant portion of the Judgment in Kothari's case is extracted



hereunder:

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"8. We are further of the view that even assuming that the dispute was not supported by any of the other workmen, it was still capable of being referred to adjudication under S. 10 of the said Act, since it was an industrial dispute within the meaning of S. 2A of the said Act. The contention raised by Mr. Ramaswami relates more to the form than to the substance of the dispute, because after the amendment of the Industrial Disputes Act by addition of S. 2A, which came into force on 1-12-1965, the distinction between a dispute or difference arising out of discharge, dismissal, retrenchment or termination of the services of an individual workman in any other manner, raised by the workman concerned and that raised on his behalf by other workmen, has no significance, so far as its reference and adjudication is concerned. It must be remembered in this connection that neither clause (k) of S. 2 nor any other provision in the said Act mentions a union of workmen or other workman in connection with the raising of a dispute. It is only the interpretation placed by the Courts on the definition Industrial Dispute given in the said clause (k) which requires that the dispute to be an industrial dispute should be a collective dispute and not an individual dispute. This was necessary because disputes between a workman or workmen on the one hand and the employer on the other, for the resolution of which the Act has been placed on the Statute book, may be of various kinds. Such disputes may relate to the general conditions of service in which all the workmen are interested or it may relate to the termination of service of a workman or workmen, in which others are not interested. If a dispute relating to the general conditions of service is allowed to be raised by an individual workman, that would defeat the very purpose and the object of the said Act, and it was to prevent this, that although the Act did not in so many words state so, the definition of the expression "industrial dispute" in the said clause (k) was interpreted to mean collective dispute espoused by a substantial number of workmen, as distinguished from individual dispute, unsupported by other workmen. Since this definition of industrial dispute was likely



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to lead and did lead to hardship in cases of disputes of individual workmen arising out of termination of their services, it was necessary to make provision for raising of such disputes by individual workman, although the same were not supported by other workmen. It was to meet this need that S. 2A was introduced in the said Act. It must also be remembered in this connection that by the said S. 2A, what an individual workman is allowed to raise as an industrial dispute is only a dispute arising out of the termination of his services by either of the various modes. He cannot raise any other dispute as an industrial dispute. This being so, all that was done by S. 2A was to widen for the purpose and to the extent discussed above the definition of "industrial dispute" given in clause (k) of S. 2 of the said Act. Therefore, whether the dispute referred to in the order of reference is an industrial dispute within the meaning of clause (k) of S. 2, or S. 2A of the said Act, is of no consequence so far as the power on the Labour Court to adjudicate the same in service is concerned. In one case it will be the workmen of an employer collectively who will be a party to the dispute and in the other case, it will be the individual workman of workmen concerned. So long as the dispute is one arising out of the termination of service of an employee in one of the various manners, it will constitute an industrial dispute capable of being referred to adjudication under S. 10 of the said Act."

These extracts fully support the stand of the workmen. Therefore, I do not think that I should embark upon the question as to what would be the correct interpretation of S. 2A of the Act, since it is very clear in this case that before the reference was made, there was a valid demand and the reference in this case was made in G.O.R. No. 104, Labour Department, dated 29-4-1960. Therefore, on the first aspect of the question, I reject the arguments of the management that there has not been any proper demand. In view of this finding, it is unnecessary for me to refer to the number of authorities relied on by the other side."

10. Merely because the Union is not registered or recognized, it does not prevent



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the Union from espousing the cause of the Workman, that is not the case herein, as individual has questioned his dismissal. It is needless to mention that with regard to the service condition, dispute has to be raised by the Union and if it is a case of depriving of employment, it is open to the individual to raise a dispute. It is no doubt true that if any order is passed prior to 15.09.2010, the Industrial Dispute must have to be raised within a period of 3 years i.e., the date of coming into effect of amendment provision to Section 2 A of the Act, which is not the case herein and the dispute herein was raised on 29.05.2013.

11. Even assuming for the sake of argument that there is a delay in raising the Industrial Dispute, there is no need for the Workman to raise dispute at all **in this case**, as it is mandatory on the part of the Management to file an approval petition before the Appropriate Forum, seeking approval of the termination order in the light of judgment of Apex Court (supra) and there is no need for the Workman to raise a dispute, questioning the termination. Moreover, in this case on hand, it is open to the Workman to file a Computation Petition even without Industrial Dispute in this case **as he is deemed to be in service.**



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12. At this juncture, it was contended by the learned counsel for the Management that the Workman was gainfully employed. However, there was no evidence adduced by the Management before the Court either oral or documentary in support thereof in order to deprive him back wages. The burden to prove gainful employment is on the Management. Learned counsel for the Workman emphasized that it is mandatory duty cast on the Management to file a petition seeking approval of their action in terms of the provisions of the I.D.Act, 1947, in the absence of which, the order of dismissal is *non-est* in the eye of law. Thus, it was strenuously argued that in view of the judgment of the Apex Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd Vs. Ram Gopal Sharma and (supra)***, the Workman is entitled to all the benefits.

13. Learned counsel for the Workman further brought to our attention that the Workman sent a letter as early as on 14.12.2019, expressing his willingness to report for work and there was no response to the said letter. It was stated that there was no justification on the action of the Management in demanding the Workman to report for work on the last drawn wages.

14. Learned counsel appearing on behalf of the Workman submitted across the



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bar that the Workman is willing to give up the back wages from the date of communication viz., 19.10.2019 till the date of rejoining.

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15. Considering the facts and circumstances of the case and taking note of the willingness given by the Workman to forgo the back wages, we are of the view that the Workman is entitled to all the benefits, as if he is deemed to be in service from the date of illegal removal from service and he is entitled to continuity of service and consequential benefits. The Workman shall report for work on or before **08.02.2023** and he is not entitled to wages from 19.10.2019 till the date of reporting for work. The employer shall pay the EPF contribution to the Trust, within a period of three months from the date of receipt of a copy of this order, if not paid within time stipulated, it will fetch interest @ 10% p.a. payable by the employee and interest portion shall be recoverable from the officer who is responsible to remit the PF amount. In the light of the Judgment of the Hon'ble Apex Court reported in ***1993 (3) SCC 214 = AIR 1994 SC 23 (Central Co-operative Consumers' Store Ltd. Vs. Labour Court, H.P. at Shimla and another)***, we are inclined to direct the interest payment recoverable from the officer and employee in this litigation is fighting for relief for more than 15 years.

With the above observation, this Writ Appeal is disposed of and the order of the



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and
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learned Single Judge is modified to the extent indicated above. No costs.

Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [J.S.N.P., J]
23.01.2023

Index: Yes / No
Internet: Yes / No
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Note: Issue order copy on 02.02.2023

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