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W.A. No.1772 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.1772 of 2023 & C.M.P. No.15575 of 2023

The Management  
State Express Transport Corporation  
(Tamil Nadu) Ltd.  
represented by its Senior Deputy Manager  
Pallavan Salai  
Chennai 600 002

Appellant

v

- 1 The Presiding Officer  
Labour Court  
Chennai
- 2 L. Thillaivasan
- 3 The Commissioner of Labour  
DMS Campus  
Teynampet  
Chennai 600 018

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the  
order dated 23.12.2021 passed in W.P. No.30593 of 2012.

For appellant  
R1  
For R2  
For R3

Mr. S. Sivasubramani  
Court  
No appearance  
Mr. T. Arunkumar  
Additional Government Pleader

- - - - -



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## JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

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

2 The summary of facts giving rise to the filing of this writ appeal is as under:

2.1 The second respondent workman, who was working as temporary Driver-cum-Conductor in the appellant Transport Corporation, was terminated from service on 20.03.2003 on the ground of unauthorised absence, pending conciliation proceedings, in pursuance whereof, the second respondent workman straightaway filed a petition before the first respondent Labour Court under Section 33-C (2) of the Industrial Disputes Act, 1947, seeking computation of monetary benefits for the period April 2003 to September 2006.

2.2 The said computation petition was allowed by the first respondent Labour Court *vide* order dated 29.11.2011 on the ground that termination was resorted to sans prior permission under Section 33(1)(b), *ibid.* and the appellant Transport Corporation was directed to pay a sum of Rs.2,83,115/- to the second respondent workman towards monetary benefits.



2.3 The aforesaid order passed by the second respondent Labour Court was assailed in a writ petition being W.P. No.30593 of 2012 by the appellant Transport Corporation on the ground that the second respondent workman was only a casual labourer and not a permanent workman and as such, there is no need to obtain prior approval under Section 33(1)(b), *ibid.* and that the appellant Transport Corporation cannot be mulcted with any liability when the termination order has not been set aside in the manner known to law.

2.4 However, the Single Bench, by order dated 23.12.2021, relying on the judgment of the Supreme Court in **New India Motors (P) Ltd. v K.T. Morris**<sup>1</sup>, confirmed the order of the second respondent Labour Court and dismissed the writ petition.

2.5 The aforesaid order passed by the Single Bench is put to assail in this writ appeal.

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

4 For the purpose of deciding this case, it is necessary to have a cursory look at Section 33(1), *ibid.*, which reads as under:



“33 Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.-

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(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall--

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.”

5 Be it noted, the expression used in the aforesaid provision is “workmen concerned in such dispute”. Section 2(s), *ibid.*, nowhere specifies that only a permanent employee can raise an industrial dispute. Thus, it is as clear as the sky that the Industrial Disputes Act, 1947, is applicable even to a casual labourer. When the factum of employment of the second respondent workman is not in dispute, the appellant Transport Corporation ought to have taken prior permission as contemplated under Section 33(1)(b), *ibid.*

6 At this juncture, it is pertinent to point out that the Supreme Court, in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v Ram Gopal Sharma and others<sup>2</sup>**, considered the question of noncompliance of the provision of Section



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33(2)(b), *ibid.* by the employer and held that when an employee is concerned with an industrial dispute pending, after the dismissal order is passed by the employer, a duty is cast on the employer to seek approval of the action and only thereafter, the dismissal order will come into effect. In the case on hand, concededly, there is a clear violation of the provisions of Section 33(1)(b), *ibid.*, and the principle laid down in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd v Ram Gopal Sharma and Others**<sup>3</sup> will apply to this situation also.

7 In view of the foregoing discussion, we find no ground to interfere with the order impugned passed by the Single Bench, affirming the order passed by the second respondent Labour Court. The order of the second respondent Labour Court shall be implemented within a period of three months from the date of receipt of a copy of this judgment in the light of the judgment of the Supreme Court in **Tamil Nadu State Transport Corporation v Neethivilangan, Kumbakonam**<sup>4</sup>.

In the result, this writ appeal is dismissed as being devoid of merits, however, sans costs. Connected C.M.P. stands closed.

(S.V.N., J.) (K.R.S., J.)  
10.07.2023

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**S. VAIDYANATHAN, J.**

and

**K. RAJASEKAR, J.**

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