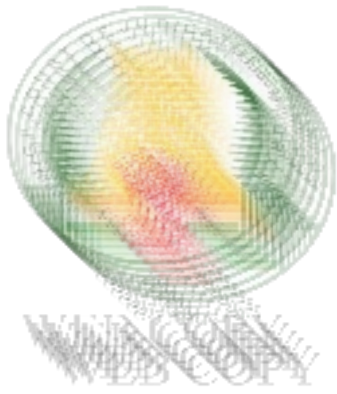




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W.A.No.2690/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-07-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.2690 of 2022

The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Vellore Region,
Vellore.

...

Appellant

-VS-

1.The Special Joint Commissioner of Labour,
Teynampet,
Chennai.

2.J.Karthikeyan

...

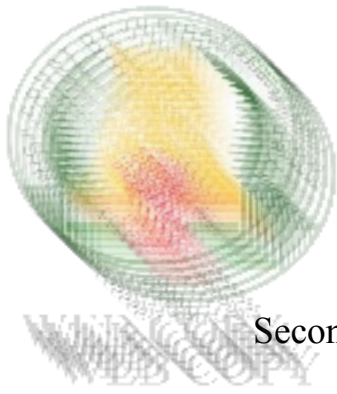
Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order,
dated 13.09.2022, passed in W.P.No.26278 of 2014 on the file of this Court.

For Appellant : Mr.Ramanlal,
Addl.Advocate General,
assisted by Ms.S.Pavithra.

For Respondent 1 : Mr.R.Ganesan
Government Advocate.

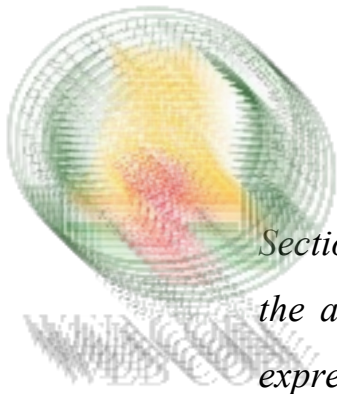
For Respondent 2 : Mr.Ajay Khose

**JUDGMENT**(By *S.Vaidyanathan,J.*)

Second respondent, who was a Conductor in the appellant Corporation, was dismissed from service on 04.11.2011. As an industrial dispute between the Management and the Union was pending and the second respondent was one of the employees concerned, the Management preferred an approval petition in the industrial dispute, seeking approval of their action. The Management had tendered one month's wages to an extent of Rs.5,954/-, which was for 26 days and not 30 days. Approval Petition was rejected, against which the Writ Petition was filed and dismissed on 13.09.2022 in W.P.No.26278 of 2014. The learned single Judge, in Para 4 of the order, has held that there was a shortfall of wages, payable to the workman.

2. A similar issue, as to whether an employee should be paid wages for the actual number of days he worked or monthly wages ought to be paid as one month's wages, was considered by a Division Bench of this Court in W.A.No.1272 of 2023 on 26.06.2023, wherein, in Paragraph 6, it has been held as under :

"6. From a reading of the proviso extracted above, it is as clear as the sky that the employee should be paid wages for one month, which could be either 28 days or 29 days or 30 days or 31 days, depending upon the number of days the month has, in which, the employee is dismissed. In the instant case, the appellant was discharged on 21.06.2012. Accordingly, the monthly wages for the entire month of June, i.e., for 30 days, will have to be paid and not 25 days, as has been paid to the appellant, albeit the fact that he is a daily wager, since the proviso to



Section 33(2)(b), ibid., nowhere states that the employee shall be paid for the actual number of days he had worked. In our considered view, the expression “wages for one month” employed in the proviso is inclusive of paid holidays which the employee would be entitled to otherwise as per law.”

Since the employee, in view of the aforesaid dictum, is entitled to wages for one month and not 26 days, the Approval Petition has got to be rejected, which has been rightly done by the authority concerned.

3. During the pendency of this Writ Appeal, today, the employee filed an affidavit, which is scanned below :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

W.A.No.2690/2022

The General Manager,
Tamil Nadu State Transport Corporation (Vilupuram) Ltd.,
Vellore Region,
Vellore.

...Appellant

Vs

1. The Special Joint Commissioner of Labour,
Teynampet,
Chennai.

2. J.Karthikeyan,
Conductor- Service No.PR.No.C-0651,
S/o Jayaraman,
Padasaalai Street,
Thamaraipakkam - 632504
Walaja Taluk.

...Respondents

AFFIDAVIT OF J.KARTHIKEYAN

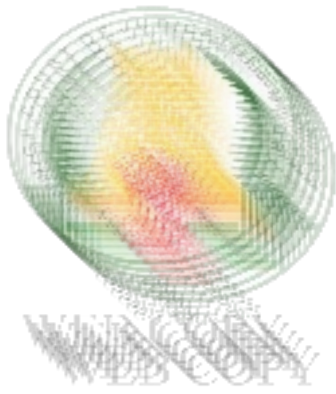
I, J.Karthikeyan, S/o Jayaraman, aged about 55 years, residing at Padasaalai Street, Thamaraipakkam - 632504 Walaja Taluk, do hereby solemnly affirm and sincerely state as follows:

1. I state that I am the 2nd Respondent in the above writ appeal and I am well acquainted with the facts of the case.
2. I state that I joined the services of the Appellant corporation as a conductor on 29.08.2007. The Appellant dismissed me from service by an order dated 04.11.2011.
3. I state that the approval petition filed by the Appellant corporation in A. P. No. 446/2011 was rejected by the 1st Respondent by an order dated 11.07.2013.
4. I state that the writ petition in W. P. No. 26278/2014 filed by the Appellant corporation challenging the above order was dismissed by this Hon'ble Court, by an order dated 13.09.2022.

Page No.1 Corrections:

[Handwritten signature]

[Handwritten signature: J. Karthikeyan]



-2-

5. I state that the above writ appeal is filed by the appellant corporation praying to set aside the order passed in the above writ petition.
6. I do hereby state and declare that from out of the total back wages payable to me for the period from the date of dismissal to the date of reinstatement, after adjusting the 17 B wages already paid to me and after deducting both the employer and employee's contributions, I agree to forego the balance back wages.
7. I do hereby state that I agree to get reinstatement with continuity of service and other attendant benefits with confirmation of my services from the due date, that is from the date on which my colleagues' services were confirmed, with wage revisions as per the settlements, with annual and other special increments and review benefits notionally.
8. I respectfully submit that the PF contributions to be deducted from my back wages may be remitted to my PF/pension account.

I therefore pray that this Hon'ble Court may be pleased to accept this affidavit of my above undertaking on file and thus render justice.

Solemnly affirmed at Chennai

this the 21ST day of July 2023

and signed his name in my presence.

Page No.2 and last page Corrections:

in

[Signature]

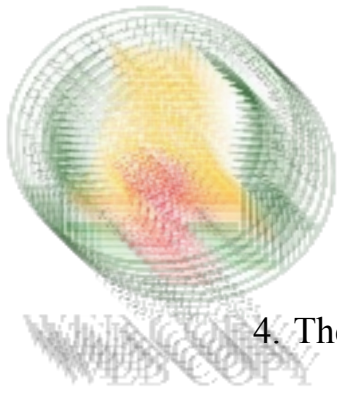
BEFORE ME

[Signature]

(G. Vijay Rishi)
25.07.2023

ADVOCATE: MADRAS

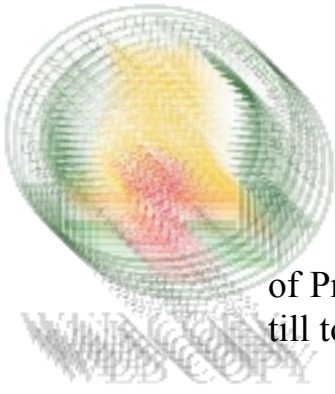
337, L.C. Street
Chennai.



4. The employee has agreed to report for work and give up all back-wages from the date of dismissal till the date of reinstatement, as has been stated in Paragraph 6 of the affidavit, which is scanned supra.

5. Though it has been vehemently contended by Mr.Ramanlal, learned Additional Advocate General, that the employee would be demanding all the benefits from the date of dismissal till the date of reinstatement as could be seen from Paragraph 7 of the affidavit, dated 21.07.2023, we are of the view that the employee would be entitled to all notional benefits, but for dismissal from service, and get continuity of service and other attendant benefits, as an order passed under Section 33 (2) (b) has got greater force than the one passed by the Labour Court in an award in an industrial dispute raised under Section 2-K or 10 of the Industrial Disputes Act,1947. Hence, we are inclined to follow our decision in W.A.No.1272 of 2023, dated 26.06.2023, mentioned supra, and the second respondent - employee would be entitled to reinstatement with continuity of service and other attendant benefits within a period of one month from today and he shall be paid on par with his counterparts on and from the date of reinstatement. However, we make it clear that :

- i. the second respondent would not be entitled to any backwages from the date of dismissal till today;
- ii. the wages paid to the second respondent during the pendency of the writ petition by means of an interim order shall not be recovered from him;



iii. neither the appellant's share nor the second respondent's share of Provident Fund need be paid for the period from the date of dismissal till today; and

iv. the second respondent's entire service shall have to be taken into account for the purpose of Gratuity and Pension, if any.

We expect the employee to be reinstated in service on or before 15th August, 2023.

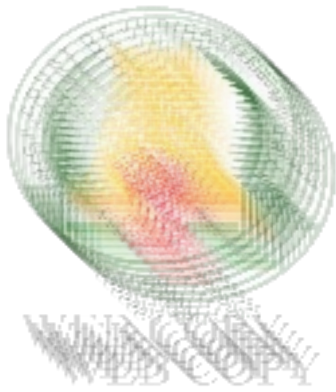
6. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.21808 of 2022 is closed.

Index : Yes/No
Internet : Yes/No
dixit

(S.V.N.,J.) (K.R.S.,J.)
21-07-2023

To

The Special Joint Commissioner of Labour,
Teynampet,
Chennai.



7/7

W.A.No.2690/2022

S.VAIDYANATHAN,J.
AND
K.RAJASEKAR,J.

dixit

W.A.No.2690 of 2022

21-07-2023