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W.A.No.3305/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-11-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.3305 of 2023

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

...

Appellant

-VS-

K.Ramamoorthy

...

Respondent

Appeal under Clause 15 of the Letters Patent against the order, dated 19.04.2023, passed in W.P.No.14797 of 2021.

For Appellant : Mr.M.Aswin

For Respondent : Mr.R.Muralidharan



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JUDGMENT

(By *S.Vaidyanathan,J.*)

Having been unsuccessful in challenging the order of the Labour Court, Cuddalore, in Claim Petition No.21 of 2019, dated 15.03.2021, in W.P.No.14797 of 2021, dated, 19.04.2023, appellant has filed this *intra-court* appeal.

2. Respondent employee was employed as a Driver in the appellant Corporation and dismissed from service for the charges levelled against him. When an industrial dispute was pending, the appellant management had not filed any approval petition of their action before the authority concerned, which made the employee to raise an industrial dispute under Section 2-A of the Industrial Disputes Act,1947, in short, "the Act". Realising that the industrial dispute need not be pursued, the employee withdrew the industrial dispute and filed a computation petition, whereupon the Labour Court determined the amount.

3. The main contention of the appellant management is that when the employee raised an industrial dispute and withdrew the same, the computation petition cannot be adjudicated and, unless there is a pre-existing right, the application under Section 33 (C) (2) of the Act is not maintainable. He would further submit that when the employee has given up the industrial dispute and accepted the dismissal order, the Labour Court ought not to have entertained the application and granted the relief to the employee.

4. Per contra, learned counsel for the respondent would submit, that, in the



light of the decision of the Supreme Court in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma & Others*, 2002 (2) SCC 244, more-so, in the light of Paragraphs 13 and 14, which are extracted below, there is no need for the employee to raise an industrial dispute, as it is mandatory on the part of the employer to comply with the mandatory provision under Section 33 of the Act and that mere withdrawal of an industrial dispute would not defeat the claim made under Section 33 (C) (2). Paragraphs 13 and 14 read as under :

"13. The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment under S.31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an



employer in contravention of the mandatory conditions contained in the proviso does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33(2)(b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them are already strained. An employer cannot be permitted to use the provision of Section 33(2)(b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the 6 employer may with impunity discharge or dismiss a workman.

14. Where an application is made under Section 33(2)(b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of



dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33-A challenging the order granting approval on any of the grounds available to him. Section 33-A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even



though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33-A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33-A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33-A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted."

5. Heard both sides.

6. The factum of employer employee relationship is not in dispute, so also the industrial dispute raised by the employee, which has been withdrawn. In the light of the Constitution Bench decision of the Supreme Court, referred to supra, there is no need for an employee to raise an industrial dispute.

7. The contention of the appellant management is based on the decision in *Punjab Beverages Pvt. Limited v. Suresh Chand and Another*, 1978 (2) SCC 144, which has been held to be incorrect by the Constitution Bench. There is no need for an employee to raise an industrial dispute or to file a complaint under Section 33-A of the Act. When the action of the management is incorrect, there arises a pre-existing right,



which can be computed by the Labour Court, which has rightly computed the amount of back-wages and other benefits payable to the employee to an extent of Rs.5,13,355/-.

8. In order to give a quietus to the matter, we have suggested to the parties as to whether the respondent employee is willing to accept 50% of the amount determined by the Labour Court, for which, an affidavit, dated 22.11.2023, has been filed by the respondent employee before this Court and the same is scanned below :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

C.M.P.No.23603 of 2023

In

W.A.(F) No.144860 of 2023

The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Cuddalore Division,
Cuddalore

...Petitioner/Appellant

Versus

Ramamoorthy,
S/o M. Kathirvel,
No.68, Padmavathy Nagar,
4th Cross, Uppilavady Road,
Manchakuppam, Cuddalore District.

Now residing at
No.75, Masilamani Nagar,
First Cross, Kondur,
Cuddalore District.

...Respondent/Respondent

AFFIDAVIT FILED BY THE RESPONDENT RAMAMOORTHY

I, Ramamoorthy, Son of M. Kathirvel, Hindu, aged about 65 years, residing at No.68, Padmavathy Nagar, 4th Cross, Uppilavady Road, Manchakuppam, Cuddalore District, now residing at No.75, Masilamani Nagar, First Cross, Kondur, Cuddalore District, now temporarily come down to Chennai, do hereby solemnly affirm and sincerely state as follows:-

1. I submit that I am the Respondent herein and as such I am well acquainted with the facts of the above case.

2. I submit that I was employed as a Driver in the Tamil Nadu State Transport Corporation which figures as the Appellant in the above case.

Page No.1



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:2:

3. I submit that the Appellant Corporation filed charges against me and dismissed me from the service. I filed the case before the Labour Court and now the Appellant took the matter by way of filing Writ Petition before the Hon'ble Single Judge, who dismissed the case and now the Corporation has filed the above Appeal with an application to condone the delay.

4. I submit that it was suggested by way of giving a quick disposal to the case to agree for a reduction of fifty percent of the Back Wages.

5. I submit that taking into consideration that I reached the age of superannuation on 30.06.2017 and to lead a peaceful life at this juncture and the fact the Appellant is also agreeing for reduction of the back wages to fifty percent without prejudice to my contention, I agree for reduction of 50% in the above case.

6. Hence, it is humbly prayed that this Hon'ble Court may be pleased to record that I am willing for reduction of back wages to the extent of fifty percent. Further I humbly pray that this Hon'ble Court may be pleased to hold that I am entitled to all the pensionary arrears and Pension. I state that a sum of Rs.5,13,355/- (Rupees Five Lakhs Thirteen Thousand Three hundred and fifty five only) is amount of back wages in which fifty

Page No.2

Corrns.:



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13:

percent may be reduced. I submit that this Hon'ble Court may be pleased to direct the Appellant to deposit the amount due to me and fix a time frame for the deposit and disbursement of the money and retirement benefits due to me by the Appellant and thus render justice.

Solemnly affirmed at Chennai
on this the 22nd day of November
2023 and the contents of this
Affidavit having been read over
and explained to the deponent in Tamil
who understood the same and put
his signature in my presence.
Page No.3 and last
Comms. :

BEFORE ME:
ADVOCATE : : CHENNAI.
11/13/2023
No. 137, Anna Salai,
Chennai, Tamil Nadu
600 045
CEL1409672400

9. The contention of the appellant employer on legal submission is untenable and cannot be accepted, as the application filed under Section 33 (C) (2) by the employee is maintainable when there is a failure on the part of the employer to file an application for approval of their action when the industrial dispute is pending. The Apex Court has categorically held that when the application filed by the management is dismissed or withdrawn, the employee is deemed to be in service. In view of the same, we accept the contention of the respondent employee and sustain the order of the Labour Court, as affirmed by the learned single Judge. Since a settlement is arrived at between the parties, the appellant employer is expected to pay 50% of the amount determined by



the Labour Court i.e., Rs.5,13,355 divided by 2 = Rs.2,56,677/- within a period of two months from the date of receipt of this order, failing which interest at 6% per annum shall be payable. We make it clear that we have not gone into other contention with regard to pension and other terminal benefits in this appeal and the same shall be extended to the employee, as applicable.

10. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.26854 of 2023 is closed.

Index : Yes/No
Internet : Yes/No
dixit

(S.V.N.,J.) (K.R.S.,J.)
23-11-2023



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11/11



W.A.No.3305/2023

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

dixit

W.A.No.3305 of 2023

23-11-2023