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W.A.No.3414/2023

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.3414 of 2023

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd.,
Vellore District. ... Appellant

-VS-

1.The Special Deputy Commissioner of Labour,
D.M.S.Compound,
Chennai.

2.Mr.S.Prabhakaran ... Respondents

Appeal under Clause 15 of the Letters Patent against the order, dated
22.09.2022, passed in W.P.No.4866 of 2014.

For Appellant : Mr.M.Aswin,
for Mr.R.Venkatesa Perumal.

For Respondent 2 : Mr.S.N.Ravichandran



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

This *intra-court* appeal has been filed by the appellant management, questioning the order of the learned single Judge passed in W.P.No.4866 of 2014, dated 22.09.2022.

2. Two Writ Petition were filed, one by the management and the other by the employee. Employee had filed W.P.No.24848 of 2009, challenging the order of the Transport Corporation, dated 24.10.2019, seeking for quashing the same and to direct the Corporation to accept the VRS under VRS Special Scheme. W.P.No.4866 of 2014 was filed by the management, challenging the order of the Authority in rejecting the Approval Petition in A.P.No.288 of 2011, dated 29.04.2013.

3. The facts are as under :

Employee – S.Prabhakaran joined the services of the Corporation on 25.01.1984. For his unauthorised absence, charges were framed on 05.10.2009 on the ground that he absented himself from duty from 23.11.2008 till 06.12.2008. As the charges were proved in the domestic inquiry, he was dismissed from service on 10.08.2011. As there was an industrial dispute pending between the management and the Union, as for the workman concerned, Approval Petition No.288 of 2011 was filed



by the management seeking approval of their action under Section 33 (2) (b) of the Industrial Disputes Act, 1947. The Authority rejected the petition on the ground that the act of the management was victimization. In the light of the decision of the Supreme Court in *Lalla Ram v. DCM Chemicals Ltd.*, AIR 1978 SC 1004, the Authority, while accepting the other contention of the management, rejected the Approval Petition, on the ground of victimization. The Authority held that domestic inquiry was conducted in accordance with the principles of natural justice; that the employee was paid one month's wages correctly; and that the approval petition was filed well within time in terms of Rule 64 (2) of the Tamil Nadu Industrial Disputes Rules, 1958.

4. The main contention of the management is that the employee, having applied for VRS, had gone on leave unauthorisedly, whereas the contention of the employee was that after a lapse of three months, without any orders being passed, charge memo was issued and, on the expiry of 90 days from the date of application, there was a deemed acceptance of his VRS application; that since he worked up to 22.11.2008, he would be entitled to all the benefits up to that date and that he cannot be proceeded against departmentally. According to the employee, he has completed 24 years and 10 months of service, amounting to 25 years, and attained the age of 58 years and, therefore, Regulation 19 (b) of the Service Regulations is applicable.

5. When we accept the case of the employee that there is a deemed acceptance of VRS after 90 days, there was no employer – employee relationship for the



employer to proceed against the employee and that the employer had proceeded against a non-employee, for which there was no need for filing an approval petition at all.

6. Learned counsel for the respondent employee would submit that as there is a deeming provision he would be entitled to all the terminal benefits for about 25 years of service rendered by him from 25.01.1984 to 24.07.2008 i.e., the date of VRS application.

7. Though the Writ Petition filed by the management has been rejected, in order to give a quietus to the matter and that the employee has accepted that it is sufficient to grant terminal benefits for the actual service rendered, we are of the view that all the benefits due to the employee for the actual service rendered for the period from 25.01.1984 to 24.07.2008, namely, the date of VRS application, will have to be extended, including gratuity and pension. All the terminal benefits, excluding gratuity, will attract interest at 4% per annum from 24.07.2008 and gratuity at 10% per annum as per the Payment of Gratuity Act, 1972.

8. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.27970 of 2023 is closed.

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



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To

The Special Deputy Commissioner of Labour,
D.M.S.Compound,
Chennai.

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W.A.No.3414/2023

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

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