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W.A. No.2144 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.2144 of 2019 & C.M.P. No.14397 of 2019

Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.
represented by its Managing Director
No.37, Mettupalayam Road
Coimbatore 641 043

Appellant

v

1 M. Unnikrishnan

2 The Presiding Officer
Labour Court
Coimbatore

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the
order dated 08.06.2012 passed in W.P. No.8665 of 2008.

For appellant Mr. A. Sundaravadhanan

For R1 Mr. M. Selvam

R2 Labour Court



W.A. No.2144 of 2019

JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

This writ appeal is directed against the order dated 08.06.2012 passed by a

Single Bench of this Court in W.P. No.8665 of 2008.

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

3 The germane facts leading to the filing of this writ appeal are succinctly stated as under:

3.1 The first respondent workman joined as Cleaner in the appellant Transport Corporation in the Valparai Depot from 01.09.1986 and his last drawn salary was Rs.1,100/-. While so, on 01.04.1998, he was orally informed that he was no longer required in service. Hence, he raised an industrial dispute which was numbered as I.D. No.74 of 2001 on the file of the second respondent Labour Court.

3.2 Before the second respondent Labour Court, it was the case of the first respondent workman that he was continuously working in the appellant Transport Corporation from 01.09.1986. Conversely, it was the case of the appellant Transport Corporation that the first respondent workman did not work continuously and that he was only a daily wager.



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3.3 The second respondent Labour Court, accepting the case of the first respondent workman that he had worked continuously for 7 years for more than 240 days in a year and the same not having been disproved by the appellant Transport Corporation though the onus was on it, held that the first respondent workman is entitled to the relief of reinstatement with continuity of service. However, holding that the first respondent workman had not proved that he was not gainfully employed aftermath removal, the second respondent Labour Court denied backwages to him.

3.4 Thereagainst, a writ petition being W.P. No.8665 of 2008 came to be preferred by the appellant Transport Corporation before a Single Bench of this Court. The Single Bench, *vide* order dated 08.06.2012, dismissed the said writ petition endorsing the finding of the second respondent Labour Court that the appellant Transport Corporation did not prove that the first respondent workman was not in continuous employment and further, following the dictum laid down by the Supreme Court in **State Bank of India v N. Sundara Money [AIR 1976 SC 1111]** confirmed the reinstatement ordered by the Labour Court. As for backwages, the Single Bench, noting that the first respondent workman had not filed any writ petition challenging his deprivation of backwages, confirmed the award of the second respondent Labour Court on that score as well.



3.5 Challenging the aforesaid order of the Single Bench, the instant writ appeal has been preferred by the Transport Corporation.

4 A reading of the pleadings by the first respondent workman would go to show that he had not worked for 240 days in 12 months preceding the date of retrenchment. The Apex Court, in **Mohan Lal v Bharat Electronics Ltd. [(1981) II LLJ 70 (SC)]**, has held in unequivocal terms that termination of service of a workman for any reason other than those excepted in Section 2(oo), amounts to retrenchment and if prerequisites for a valid retrenchment have not been complied with, the termination of service would be void *ab initio*; therefore, the workman would be entitled to a declaration that he continued to be in service with all consequential benefits. It was further added that the workman cannot be retrenched without any notice or notice pay in view of provisions of Section 25-F of the Industrial Disputes Act, 1947.

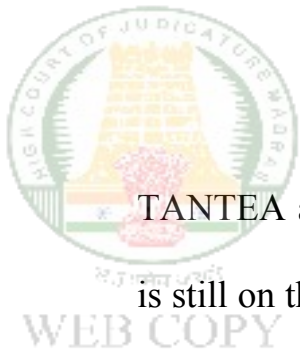
5 From the above, it is apparent that the Management, at the first blush, should see whether the workman has completed 240 days in the year preceding his termination or not and it should also be seen whether the workman has been paid at the time of retrenchment, compensation, which shall be equivalent to 15 days' average pay (for every completed year of continuous service) or any part thereof



in excess of six months, failing which, it can easily be presumed that there is a violation of Section 25-F, *ibid.*, and therefore, the consequential order needs to be followed, which is nothing else than reinstatement and continuity of service and other benefits. It is a well settled law that if the facts require, instead of reinstatement, *etc.*, one time lumpsum compensation can be granted in the light of the judgment in **Divisional Controller, Maharashtra State Road Transport Corporation v Kalawati Pandurang Fulzele [2022 SCC OnLine SC 112]**, the relevant portion of which reads thus:

“15.Having heard the learned counsel for the respective parties and considering the nature of appointment of the respondent namely as contractual appointment on a fixed salary/honorarium of Rs. 500/- per month and she worked for approximately four years, we are of the opinion that in lieu of reinstatement and back wages, if a lumpsum compensation of Rs. 3,00,000/- (Rupees Three Lakhs only) is awarded, it will meet the ends of justice. In the peculiar facts and circumstances of the case, when the appointment was purely on contractual basis and on a fixed salary/honorarium of Rs. 500/- per month, the order of reinstatement with back wages was not warranted and instead if the lumpsum compensation is awarded in lieu of reinstatement and backwages as observed hereinabove, it will meet the ends of justice.”

6 However, as aforesaid, based on the finding of fact rendered by the Labour Court, the Single Bench has confirmed the award of the Labour Court. However, when the first respondent workman was asked to report for work, it came to light that during the pendency of the industrial dispute and the writ petition, he was employed in TANTEA, which fact was not disclosed by the first respondent workman. But, the first respondent workman had resigned his job in



TANTEA and had taken employment in the appellant Transport Corporation and is still on their roll.

7 Since TANTEA is also a wing of the Government, in order to give a quietus to the matter, we enquired with the learned counsel for TANTEA as to whether the services rendered by the first respondent workman in TANTEA could be counted for the purpose of continuity of service or whether TANTEA could take him in employment.

8 At that stage only, it was informed to us that the first respondent workman had resigned from TANTEA getting all his terminal benefits and that he had been reinstated in the appellant Transport Corporation on 13.08.2019.

9 Though the first respondent workman has not fulfilled the condition of continuity of service as contemplated under Section 25-B of the Industrial Disputes Act, inasmuch as, he has already been reinstated in service in the appellant Transport Corporation pursuant to the award of the second respondent Labour Court, as confirmed by the Single Bench, we are of the view that his employment need not be disturbed as it is the contention of the appellant Transport Corporation that the first respondent workman has got another three more years of service in the light of the judgment in **Gujarat STRC vs U.A.**



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Malek [(2001) 10 SCC 548], the relevant paragraph of which reads thus:

“2. It is now brought to our notice that the respondent has been in service in the establishment of the appellant from the year 1982 onwards pursuant to the award of the Labour Court. In the circumstances, we do not think it would be appropriate to upset the present state of affairs when the respondent has been in employment for such a long period. Appeal is, therefore, dismissed.” (emphasis supplied)

However, continuity of service and other benefits awarded by the second respondent Labour Court and confirmed by the Single Bench are interfered with. Further, it is made clear that the first respondent workman shall be granted terminal benefits reckoning the actual service rendered by him in the appellant Transport Corporation from the date of his joining, excluding the period of his work in TANTEA.

This writ appeal stands disposed of in the above terms. No costs.
Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
14.07.2023

cad

To

The Presiding Officer
Labour Court
Coimbatore



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