

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD) No.3103 of 2020

G.Rengasamy

... Petitioner

-VS-

1.The Deputy Commissioner of Labour,
O/o.The Deputy Commissioner of Labour,
Trichy

2.The Management
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Kumbakonam – Region,
Kumbakonam

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 26.08.2019 in e.f.vz;.m/464/19 of the 1st respondent quash the same and consequently direct the 1st respondent to take on file the industrial dispute dated 06.08.2019 filed by the petitioner, relating to his dismissal and right to reinstatement with the 2nd respondent, within a time frame as may be fixed by this Court.

For Petitioner : Mr.G.M.Xavier

For Respondents : Mrs.K.ChristyTheboral for R1

Additional Government Pleader

Mr.P.Balasubramanian for R2

ORDER

Challenging the impugned order dated 26.08.2019 of the first respondent and for a consequential direction to the 1st respondent to take on file the industrial dispute dated 06.08.2019 filed by the petitioner, relating to his dismissal and right to reinstatement with the 2nd respondent, this writ petition has been filed.

2. The case of the petitioner in nutshell is as follows:

The petitioner was initially appointed as a Driver on 12.08.2009 on temporary/ daily rated employee. Subsequently, on 23.11.2013, the petitioner was made as permanent employee and allotted to Aranthangi branch. While he was in service, his father was mentally affected from 17.06.2014 and subsequently, he died on 22.12.2014. In order to take care of his father, the petitioner has not attended the duty and absented from duty by informing the same to the higher officials. However, a charge memo dated 14.07.2014 was issued, followed by an enquiry. The petitioner attended the enquiry on 23.04.2015 and the enquiry officer gave a finding that the charges against him are proved. The second

respondent issue a show cause notice to the petitioner on 02.09.2015 calling for further explanation and the petitioner also submitted his explanation to cancel the proposed punishment and to reinstate him into service. However without accepting the said explanation, he was dismissed from service on 08.12.2015 and he was also paid with one month salary. For approval of his dismissal, the respondents filed an approval petition before the Special Deputy Commissioner of Labour, Chennai under Section 33(2)(b) of the Industrial Disputes Act (hereinafter referred to as 'the Act'). The second respondent has also raised an industrial dispute. As such the petitioner is awaiting the results of the approval petition. However, no communication was forthcoming. Hence, the petitioner raised an industrial dispute on 05.08.2019. However, his dispute was returned by the first respondent stating that it is barred by limitation, ie., three years is fixed as limitation under Section 2(A)(3) of the Act. Therefore, challenging the same, the petitioner is before this Court with this writ petition.

3. The learned counsel for the petitioner would submit that though it is not mandatory to get approval, in the absence of any pending

proceedings, the respondent Corporation has not filed any petition under Section 33(2)(b) of the Act before the Conciliation Officer for approval of the dismissal order. As per the Act, the period of limitation shall be from the date of dismissal. However, there is no specific bar to condone delay and section 5 of the limitation Act would come to the rescue of the employee and hence, the impugned order is per se illegal and interference is warranted.

4. To support his contention, the learned counsel relied upon a decision rendered in W.P.No.39434 of 2006 dated 19.06.2012 (N.Ramalingam v. The Administrator, Tamil Nadu State Transport Corporation, Chennai and another) to contend that the relationship of an employer and employee is not legally terminated till approval of dismissal/discharge is granted by the competent authority under the Act and by passing an order of dismissal or discharge, the de-facto relationship of an employer and employee might have come to an end, but not the de-jure relationship and in law, that can take place only when the competent authority accords its approval.

5. However, the learned counsel for the respondents would contend that the petitioner absented himself for a period of 540 days, thereby a charge memo was issued. The petitioner submitted his explanation and not being satisfied with the explanation, enquiry officer was appointed and on completion of enquiry and on the basis of the enquiry report, the petitioner was dismissed from service. However, the petitioner was paid with one month salary. It is further contended that since there is no reply from him for the second show cause notice issued, the order of dismissal came to be passed. Since there is no dispute is pending before the authority, namely, Commissioner of Labour, the respondent has not filed Form T for granting permission. The petitioner filed petition on 05.08.2019 under Section 2(A) of the Act, which ought to have been filed within three years from the date of dismissal and since he has not raised the same, the impugned order came to be passed. Since the petitioner was holding a responsible post in operating the bus involving public, his absence for 540 days, that too, without proper permission would affect the public and passengers and hence, no interference is warranted.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

7. It is not in dispute that the petitioner absented himself for 540 days, which is unauthorized one and he has not made any allegation with regard to the procedure adopted and in conducting the departmental proceedings. A show cause notice was issued and an enquiry was also contemplated and the enquiry officer submitted his report. The petitioner has also submitted his explanation to the second show cause notice. Thereafter, a dismissal order was passed on 08.12.2015. It is also equally not disputed that as per Section 33(2)(b) of the Act, the petitioner was paid one month salary on the same day vide cheque dated 08.12.2015. However, the petitioner has not raised any dispute before the Conciliation Officer against the dismissal order and in the absence of any conciliation proceedings, the respondent Corporation has not filed any application under Section 33(2)(b) of the Act. Though it is mandatory to file an application for approval under Section 33(2)(b) of the Act, if any dispute is pending before the Conciliation officer. In the absence of any dispute, it is not mandatory for the respondent Corporation to file an approval application under Section 33(2)(b) of the Act and further the petitioner

raised an industrial dispute under Section 2(A)(3) before the Tribunal beyond three years and there is no provision to condone the delay of three years. In the absence of any provision and the industrial dispute being a special enactment and in the absence of any provision, this Court cannot find fault with the order passed by the first respondent and the decision relied upon by the petitioner is not applicable to the facts of the present case. In the said decision, the conciliation proceedings is pending before the authority and pending conciliation proceedings, the employee was dismissed from service and the employer has not filed an application under Section 33(2)(b) of the Act. In this background, this Court held that dismissal order is bad in law and without approval. However, in the present case, no conciliation proceedings is pending before the Conciliation Officer. In the absence of any proceedings, approval petition by the respondent Corporation is not mandatory. Hence, the prayer sought for by the petitioner sans merit. Accordingly, the writ petition fails and the same is dismissed. No costs.

19.01.2023

NCC : Yes/No
Index : Yes/No
RR

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