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W.P.No.1760 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM

THE HONOURABLE MRS. JUSTICE **N.MALA**

W.P.No.1760 of 2024

J.Kalitas

... Petitioner

Vs.

1.The Managing Director,
Metropolitan Transport Corporation Chennai Ltd.,
No.2, Anna Salai, Pallavan Illam,
Chennai – 600 002.

2.Assistant Labour Commissioner – II,
Kuralagam, Chennai – 600 108.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the second respondent in Na.Ka.No.A/676/2022 dated 23.01.2023 and quash the same and consequently direct the second respondent to conciliate 2A petition filed by the petitioner and to decide the issue on merit.

For Petitioner : Mr.S.T.Varadarajulu

For R1 : Mr.A.Vinothraj

For R2 : Ms.Mythrayee Chandru, Spl. GP



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ORDER

Challenge in this writ petition is made to the order dated 23.01.2023 in Na.Ka.No.A/676/2022 passed by the second respondent and consequently direct the second respondent to conciliate 2A petition filed by the petitioner and to decide the issue on merits and pass appropriate orders.

2. The grievance of the writ petitioner is that he was working as a driver in the first respondent Transport Corporation since 21.12.1997. He had put in 16 years of continuous service. He was issued with charge memo for the accident caused by him and after enquiry he was dismissed from service on 15.10.2013. The first respondent Transport Corporation filed an Approval Petition in A.P.No.301/2013 seeking approval for the dismissal under Section 33(2)(B) of the Industrial Disputes Act. The said Approval Petition was rejected vide order dated 28.11.2018. Thereafter, the first respondent Transport Corporation filed W.P.No.21189/2019 and it was allowed on 11.04.2022 on the following terms, which is extracted hereunder:

"6. At this stage, Learned Counsel for the Second Respondent, on instructions, states that the Second Respondent does not have any objection for granting approval for termination of the Second Respondent without prejudice to his rights to invoke the remedy



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available under Section 2-A of the Act to challenge the order of termination on merits and in accordance with law. He has also made an endorsement to that effect in the court record.

7. In that view of the matter, the impugned order order dated 28.11.2018 in A.P. No. 301 of 2013 is set aside and it shall be treated that the First Respondent has granted approval under Section 33(2)(b) of the Act to the Petitioner for the termination of the Second Respondent. Though obvious, it is made clear that no view has been expressed by this Court on the correctness or otherwise of the merits of the rival contentions of the parties on the termination of the Second Respondent from service and that the Second Respondent is not precluded from working out his remedies to impeach the order of termination before the proper forum in the manner recognized by law (including resort to complaint under Section 33-A of the Act, if available), and that the period from the date of termination till the date on which certified copy of this order is made ready by the Registry, shall be excluded for the purpose of computation of limitation in that regard."

The petitioner filed the petition under Section 2A of the Industrial Disputes Act for conciliation. The second respondent without conciliating the issue, closed the petition citing the aforesaid order of the Hon'ble High Court. Aggrieved over the orders passed by the second respondent, the present writ petition is filed.



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3. Heard both sides and perused the materials available on record.

4. It is seen from the records that the second respondent has not even read the order passed by the Hon'ble High Court. It is clear that the petitioner was granted liberty to raise an industrial dispute under Section 2A of the Industrial Disputes Act against the order of the termination, on merits and in accordance with law. This Court had also excluded the period from the date of termination till the date of certified copy of the order. In the light of the order passed by this Court in W.P.No.21189/2019 the impugned order cannot be sustained and the same is set aside. The matter is remitted to the second respondent for fresh consideration. The second respondent is directed to pass appropriate orders afresh on merits in accordance with law within a period of four weeks from the date of receipt of a copy of this orders.

Accordingly, the Writ Petition is disposed of. No costs.

30.01.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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N.MALA, J.

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