



W.P.No.17074 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2024

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.17074 of 2015

The Management,
Tamil Nadu State Transport Corporation (Villupuram) Ltd..
Cuddalore Region,
Cuddalore,
Represented by its General Manager

... Petitioner

Vs.

1. Thiru D.Veerasamy,
S/o.Thangarasu

2. The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai - 600 006.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for records passed by the second respondent in A.P.No.261 of 2012 dated 23.07.2014 and quash the same.

For Petitioner : Mr.M.Aswin
Standing Counsel

For Respondents : Mr.V.Ajay Khose for R1
R2 - Labour Court



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give one more chance to the employee respondent, the petitioner employer on 18.11.2011 reinstated the employee and after reinstatement, he had been working for two months.

4. During this period, out of 55 working days, it was claimed by the petitioner Management that, he had been working only for 29 days and thereafter, from 12.01.2012 onwards, again he had been continuously absent, therefore the Management decided to inflict the punishment of removal from service, accordingly, such a punishment had been inflicted against him by order dated 22.11.2012.

5. After inflicting the said punishment to implement the same, the petitioner Management had sent an application to the appropriate authority under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') to get approval. However, such an application in A.P.No.261 of 2012 having been considered was rejected by the authority under Section 33(2)(b) of the Act by order dated 23.07.2014. Challenging



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the said order, the present writ petition has been filed by the petitioner Management.

6. Heard Mr.M.Aswin, learned Standing Counsel appearing for the petitioner Management who has reiterated the aforesaid, therefore would seek indulgence of this Court to interfere with the order passed by the authority under Section 33(2)(b) of the Act and permit the petitioner Management to implement the order.

7. However, Mr.V.Ajay Khose, learned counsel appearing for the respondent employee has stated that, because of the Ortho problem, the respondent employee was not able to stand for longer time and the job of the Conductor is the job where he has to stand for longer time during the trips where he has in duty, therefore, in order to take treatment, as his Ortho problem developed he had taken treatment from 08.12.2010 and he had applied leave also which was not, according to him, considered by the Management absolutely.



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8. Thereafter, after reinstatement from 18.11.2011 though he had been working for sometime, from 12.01.2012 onwards again his health condition got deteriorated as his Orthopedic problem as well as his Diabetic problem combined together made him to stay back at home to take treatment continuously, therefore he could not attend the duty. However, he claimed to have given request for leave on medical grounds with medical certificate which, according to him, had not been considered by the Management.

9. I have considered the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

10. Insofar as the health condition of the respondent employee is concerned, it is an admitted fact that, his health has been deteriorated and is not able to stand and also other ailments attached with him, therefore this Court feels that, better he can be medically invalidated as per rule and accordingly, after medical re-invalidation, his retirement-cum-pensionary benefits can be calculated and paid to him.



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11. In this context, even though the learned Standing Counsel appearing for the petitioner Management wanted to interfere with the order passed by the authority under Section 33(2)(b) of the Act and seeking permission to implement the order of termination, this Court feels that, since the respondent employee had been working continuously from 01.03.1991 till the order of termination given on 22.11.2012, therefore, more than 20 years since had been working before the order of termination was passed by the Management, for such 20 years he should be given the pensionary benefits and retirement benefits.

12. If at all the respondent employee is not able to continue the job of Conductor either alternate job could be explored and even for such alternate job, if he is not a fit person to be employed, then the medical invalidation is the only source to be adopted by the employer.

13. It is further to be noted that, for all these years, 17(B) wages are being paid and at the time of raising the issue, the employee was



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49 years old, presently he is running 58 years. Therefore, the remaining service period of him is very limited, even for such a limited period of service, his health does not permit him to continue, better he can be medically invalidated, of course with retiral and pensionary benefits. While making such benefits, 17(B) wages already been given can be taken into account and accordingly what are all the entitlement for which the employee is entitled to get such benefits can be calculated and be paid to him.

14. Resultantly, the following orders are passed in the present writ petition:

(i) That the petitioner Management is hereby directed to medically invalidate the respondent employee **from tomorrow (i.e. 23.01.2024)** in view of his deteriorated health conditions and also taking note of the fact that his remaining period for superannuation is very short.

(ii) After the medical invalidation, his service benefits including retirement-cum-pensionary benefits be calculated and accordingly be paid to him.



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(iii) While paying the same, 17(B) wages already been paid to him shall also be taken into account and accordingly, as per the entitlement of the respondent employee, the aforesaid benefits shall be calculated and be paid.

(iv) To the aforesaid extent, the order passed by the authority in rejecting the application under Section 33(2)(b) of the Act is modified.

15. With these observations and directions, this writ petition is accordingly disposed of. However, there shall be no order as to costs.

22.01.2024

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai - 600 006.



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R.SURESH KUMAR, J.

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