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W.P.No.4733 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.4733 of 2024

V.Kanniappan

... Petitioner

-Vs-

Metropolitan Transport Corporation (Chennai) Ltd.,
represented by The Managing Director,
Pallavan Illam,
Anna Salai,
Chennai – 600 002.

... Respondent

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to issue duty permission order to petitioner immediately with all fringe benefits as if I am in continuous service from the date of petitioner appointment to till date taking into consideration of the fact that the order of dismissal by the Respondent became ineffective from the date it was ordered as approval for the same was refused by the Authority on 09.10.2023 through Appeal Petition No. 229 / 2022 under Section 33(2)(b) of the Industrial Disputes Act 1947 and to make payment of back wages from the date of dismissal to the date of rejoining duty.

For Petitioner : Mr.N.Ishak

For Respondent : Mr.A.Vinothraj
Standing Counsel



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ORDER

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This writ petition has been filed for direction directing the respondent to issue duty permission order to the petitioner with all fringe benefits as if the petitioner was in continuous service from the date of his appointment to till date taking into consideration of the fact that the order of dismissal by the Respondent became ineffective from the date it was ordered as approval for the same was refused by the Authority on 09.10.2023 through Appeal Petition No. 229 / 2022 under Section 33(2)(b) of the Industrial Disputes Act, 1947 and to make payment of back wages from the date of dismissal to the date of rejoining duty.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The petitioner, while he was working as a Conductor, the checking squad conducted checking. They found that the petitioner collected money from the passengers without issuance of tickets. Therefore, he was issued with a charge memo dated 09.03.2022. Though he submitted an explanation, without being satisfied with the explanation submitted by the petitioner, domestic



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enquiry was ordered. During the enquiry, the Enquiry Officer found that the charges framed against the petitioner were proved. On receipt of the enquiry report, the respondent passed a final order, thereby dismissing the petitioner from service by an order dated 29.11.2022. The respondent had sent a proposal in Form-T application on 29.11.2022 for approval as contemplated under Section 33(2)(b) of the Industrial Disputes Act, 1947 to the Special Joint Commissioner of Labour, Chennai. The authority concerned rejected the proposal sent by the respondent for approval of the order of dismissal by an order dated 09.10.2023. Even thereafter, the petitioner was not provided with any employment so far.

4. The learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India dated 17.01.2017 in Civil Appeal Nos.87-88 of 1986 reported in **2002 (2) SCC 244**, wherein it was held that in the event of non-approval of the order of discharge or dismissal by the authority in the Approval Petition filed under Section 33(2)(b) of the Industrial Disputes Act, 1947, the employee concerned continues to be in service as if the order of discharge or dismissal was never passed. After rejection of approval petition, the petitioner submitted a representation and the same was not considered so far.



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5. The learned Standing Counsel appearing for the respondent submitted that as against the rejection of approval of the order of dismissal, the respondent is taking steps to file a writ petition before this Court. However, so far, no writ petition has been filed and no interim order has been produced before this Court.

6. Therefore, the respondent is directed to issue an order to permit the petitioner to join duty with all benefits including continuity of service, forthwith.

7. With the above directions, this writ petition is disposed of. There shall be no order as to costs.

27.02.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam,
Anna Salai,
Chennai – 600 002.



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G.K.ILANTHIRAIYAN. J.

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