



WEB COPY



W.P.No.9839 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.02.2024
Pronounced on : 08.02.2024

CORAM:

THE HONOURABLE DR.JUSTICE D. NAGARJUN

W.P.No.9839 of 2015

1. G. Gajendran [deceased]
2. G. Loganayagi W/o. Late G. Gajendran
3. Eswari Ramkumar D/o. Late G.Gajendran
4. G. Dharmalingam S/o. Late G. Gajendran
5. G. Manikandan S/o. Late G. Gajendran
[2 to 5 petitioners are substituted as Legal
representatives of 1st petitioner / deceased as
per order dated 10.01.2024 passed in
W.M.P. No.33714 of 2023]
Petitioners

...

vs.

1. The Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam, Chennai-600 002.

2. The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund, Pallavan Salai,
Chennai-600 002.
Respondents

...

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to pay backwages to the petitioner from the date of dismissal to the date of



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retirement and pension and other terminal benefits from the date of retirement.

For Petitioner : Mr. S.T. Varadarajulu

For Respondents : Mr. R. Balaji

JUDGMENT

(Judgment of the Court was made by DR. D. NAGARJUN, J.)

This Writ petition has been filed seeking for Writ of Mandamus directing the respondents to pay backwages to the petitioner from the date of dismissal to the date of retirement and pension and other terminal benefits from the date of retirement.

2. The petitioner was working as a Conductor at Alandur Depot. He has taken leave from 13.05.2006 on account of illness due to Hepatitis B. Due to that effect, he had taken leave by informing to the Controller. After recovery, he has reported back to the duty with medical certificate. The Controller asked him to meet the Branch Manager. In turn, the Branch Manager asked him to meet the General Manager. A Show Cause Notice was issued on 24.05.2007 proposing him to be dismissed from service. He has immediately approached the concerned authorities requesting to give



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him permission to join duty, however it was denied. Ultimately by way of order dated 10.03.2008, the petitioner was dismissed from service.

3. The Transport Employees' Union issued a Strike Notice on 07.07.2007 to the respondent management demanding certain concessions for the employees. The respondent Corporation is the Public Utility Service, thereby the conciliation proceedings deemed to have been started in the date of issuance of notice. The conciliation proceedings, in fact, started on 07.07.2007 before the Joint Commissioner of Labour, Chennai. The respondent as per Section 33(2)B of Industrial Disputes Act should have sought for approval of the dismissal of the petitioner. However, the 2nd respondent did not seek for approval under Section 33(2)B of I.D. Act from the concerned authorities. In the meanwhile, the petitioner has attained the age of superannuation on 31.12.2011. It is submitted that the dismissal of the petitioner is erroneous and non est and his approval has not taken by the respondent. Hence the petitioner sought for payment of backwages from the date of dismissal to the date of retirement and also consequential terminal benefits including the pension.

4. The respondent Corporation has filed a counter stating that the



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petitioner started working in the Corporation as Conductor with effect from 31.05.1988 and he was absent unauthorizedly, thereby a charge memo was issued on 11.07.2006 for which, the petitioner has replied on 21.07.2006 and a domestic enquiry was conducted by following principles of natural justice. The petitioner was given number of opportunities and the petitioner has also taken part in the domestic enquiry.

5. During the pending domestic enquiry, the petitioner was transferred from Alandur Depot to Chrompet Depot on 25.06.2006. The petitioner has not reported to the duty and was unauthorizedly absent from 06.01.2006. Previously also, the petitioner was unauthorizedly absent for about 20 times and for which, he was punished.

6. It is mentioned that after lapse of 6 years, the petitioner has sent a notice dated 03.12.2014 claiming backwages and terminal benefits and on account of pendency of larger issue at the time of employee's dismissal, the 1st respondent had difficulty in filing an approval petition. The petitioner is not entitled for backwages on the principle of “No work, no pay”. Therefore the respondents sought for dismissal of the Writ petition.



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7. Heard both sides'. Perused all the records available.

8. It is submitted by the learned counsel for the petitioner that principles of natural justice have not been followed while conducting enquiry, opportunity was not given and approval under Section 33(2)B was not taken, thereby the petitioner is entitled for backwages. The learned counsel appearing on behalf of the petitioner has relied upon the judgments in *N. Ramalingam vs. The Administrator, Tamil Nadu State Transport Corporation, Employees Pension Fund & another reported in CDJ 2012 MHC 2779* and *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., v. Ram Gopal Sharma and others reported in 2002-(001)-LLJ-0834-SC*, in support of his arguments.

9. On the other hand, the learned counsel for the respondents submitted that the petitioner is not entitled for any backwages under the principle of “No work, No pay”. Domestic enquiry was conducted by following the principles of natural justice by giving opportunities to the petitioner and therefore, the claim of the petitioner after lapse of 6 years may be dismissed as erroneous.



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10. The point that falls for consideration of this Court is whether the principles of natural justice have been followed during the course of domestic enquiry. The point which is required to be considered by this Court is whether on account of the fact that the respondent has not taken any steps to get the dismissal approved by the concerned authorities of Labour under Section 33(2)B and hence the petitioner is entitled for backwages.

11. According to the counter affidavit of the respondents at Para No.8, the respondents' Corporation was busy in dissolving the larger dispute pending with the Employees' Union, thereby there was no time for the respondents to file application before the Labour Authorities for approval. That means, the dismissal of the petitioner due to misconduct did not get any consent or approval of the authorities of Labour. Unless the dismissal of the workman has not been approved as required under Section 33(2)B of Industrial Disputes Act, the proceedings initiated against the petitioner in respect of the alleged misconduct is non-est, is very much certain. In this regard, in case, the approval is not obtained, the workman



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is required to be reinstated with backwages. In the case on hand, the petitioner was dismissed in the course of proceedings and subsequently passed away. Therefore the question of reinstatement at this stage does not arise. However, the petitioner is entitled for the backwages from the date of his dismissal till the date of retirement and consequently all terminal benefits including pension. In respect of the backwages are concerned, as rightly submitted by the respondents, the petitioner is not entitled for the wages since he has not worked from the date of dismissal till retirement under the principle “No Work, No pay” . However, his service is required to be considered from the date of dismissal till his retirement notionally his service is to be considered so as to continuously count the service period notionally for service benefits including the fixation of pay.

12. In view of the above, the relieves sought for by the petitioner in the Writ petition is allowed in part. The relieves sought for by the petitioner to pay the backwages is hereby declined.

13. Accordingly, this Writ petition stands allowed partly. There shall be no order as to costs.

(D.N.R.J)
01.02.2024



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mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

DR. D. NAGARJUN, J.,

(mjs)

To

1. The Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam, Chennai-600 002.

2. The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund, Pallavan Salai,
Chennai-600 002.

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