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W.P.No1214 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	5/2/2024
Delivered on	1/7/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.1214 of 2014

The General Manager
Tamil Nadu State Transport Corporation
(Villupuram) Ltd
Villupuram Region
Villupuram 605 602 ... Petitioner

Vs

1. The Special Deputy Commissioner of Labour
D.M.S.Compound
Chennai.
2. R. Krishnamurthy ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records of the first respondent made in A.P.No.179 of 2011 dated 22/4/2013 and to quash the same.



W.P.No1214 of 2014

For petitioners ... Mr.M.Aswin

For respondents ... Labour Court – R.1

Mr.S.T.Varadarajulu
for R.2

ORDER

This writ petition is filed by the Tamil Nadu State Transport Corporation (Villupuram) Limited against the second respondent workman seeking to issue writ of certiorari to call for the Proceedings in Approval Petition No.179 of 2011 dated 22/4/2013 and to quash the same.

2. The facts in brief are that the second respondent has joined the petitioner Corporation as Driver on 1/9/2005 and was serving at Villupuram – I Depot. He was unauthorisedly absent from 11/4/2010 to 18/4/2010 and again from 30/4/2010 until the date of issuance of charge memo i.e., on 5/7/2010. On account of the absence of the second respondent being Driver, plying of the transport vehicles meant for the public was affected, as a result of which complaints have been received by the Branch Manager – I, on 7/5/2010 and also on 24/6/2010.

3. The petitioner Corporation was issued with a charge memo on



W.P.No1214 of 2014

5/7/2010 for his mis conduct of unauthorised absence. An explanation was sought for. However, the second respondent chose not to reply, thereby the petitioner Corporation appointed an Enquiry Officer and Enquiry was conducted on various dates. However, pending enquiry, petitioner was permitted to attend duty from 11/11/2010 and enquiry was proceeded further. Finally, Enquiry Officer has submitted a report finding that the charges against the second respondent are proved.

4. Copy of the enquiry report was sent to the second respondent seeking his remarks. The second respondent has submitted a reply. As the explanation was not satisfactory, the petitioner Corporation has issued the Proceeding on 10/6/2011, dismissing him from service. It is mentioned further in the affidavit that even during the pendency of the enquiry proceeding, second respondent was absent intermittently on various spells i.e., 16, 13, 13, 11, 20 and 14 days.

5. The petitioner Corporation after dismissal of the second respondent has moved an application under 33 (2) (b) of the Industrial Disputes Act, 1947 before the first respondent, Special Deputy Commissioner of Labour, Chennai for approval of the dismissal of the



W.P.No1214 of 2014

second respondent. The same was taken up in A.P.No.179 of 2011 and after conducting enquiry, the first respondent has ultimately rejected to give the approval for the dismissal of the second respondent. Aggrieved by the same, present writ petition is filed.

6. Heard Mr.M.Aswin, learned counsel for the petitioner and Mr.S.T.Varadarajulu, learned counsel for the second respondent.

7. It is submitted by the learned counsel for the petitioner that the first respondent authority while considering the Approval Petition was misled by the second respondent and gave a finding that the petitioner Corporation has failed to pay full one month wages, as required under Section 33 (2) (b) of the Industrial Disputes Act, 1947. It is submitted further that according to the finding of the first respondent authority, second respondent was paid Rs.80/- as Laundry Allowance in every month's salary by the petitioner Corporation under Section 33 (2) (b) of the said Act. In the last drawn salary, the abovesaid amount was not paid, thereby concluded that the petitioner Corporation has not paid salary in full. Accordingly, approval was declined.



W.P.No1214 of 2014

8. The learned counsel appearing for the second respondent has submitted that unless full salary is paid to the workman, requirement of Section 33 (2) (b) is not complied with, thereby, the Approval Authority has rightly rejected the Approval Application. He also further submitted that second respondent has reached the age of Superannuation and hence, he is not insisting for backwages also. Thereby, sought for grant of rest of the reliefs which the second respondent is entitled to.

9. Perused the materials available on record.

10. The simple question that falls for consideration in this writ petition is whether the finding of the first respondent that the salary was not fully paid as required under Section 33 (2) (b) of the Industrial Disputes Act, 1947 will sustain.

11. Section 33 (2) (b) of the Industrial Disputes Act runs as under:-

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders



WEB COPY



W.P.No1214 of 2014

applicable to a workman concerned in such dispute, or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman

____(a)[alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding;

(b)for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.”

12. On going through the above provision, petitioner Corporation is



W.P.No1214 of 2014

expected to give one month wages once the workman was dismissed on misconduct. In the case on hand, second respondent was paid Rs.7,130/- as wages for one month at the time of dismissal. It was given to the workman by way of cheque on 16/6/2011. It is the contention of the second respondent that Rs.7,130/- is not full wages paid in previous month. He has submitted that as per the pay certificate of March 2011, the petitioner Corporation has also paid Rs.80/- to the second respondent towards laundry allowance which is missing in the wages given to the second respondent after dismissal. Therefore, the question is whether Rs.7,130/- given by the petitioner Corporation to the second respondent on his dismissal includes the laundry allowance. Admittedly, break up of salary was not filed either before the first respondent authority or before this Court.

13. Further, it is submitted by the learned counsel for the petitioner Corporation that the petitioner Corporation will pay Rs.230/- per day to the second respondent, thereby, if the salary of the second respondent is calculated for 30 days, it will come to Rs.6,900/- and however, the second respondent was paid Rs.7,310/- which is in excess of his salary,



W.P.No1214 of 2014

thereby, the balance amount shall be towards the allowances including the laundry allowance. However, in the affidavit, the writ petitioner has stated that the second respondent has calculated 31 days for payment of salary. Therefore, if the salary of the second respondent is calculated for 31 days, it comes to Rs.7,130/- which is paid by the petitioner Corporation in favour of the second respondent.

14. There is no clarity as to whether the petitioner will pay daily wages to the second respondent basing on number of days attended to the duty and as to the number of days, he was present in the previous month. Therefore, if the petitioner Corporation pays the wages, which was paid to second respondent in the previous month, it may comply with the requirements of Section 33 (2) (b) of the Act. There is also no clarity as to whether laundry allowance will be paid regularly to all the employees or will it be paid only to some of the employees intermittently or otherwise. Therefore since there is no clarity on certain factual aspects basing on the materials available, including the fact that one month salary paid in compliance of Section 33 (2) (b) of the Industrial Disputes Act is less than the salary paid in previous month, this Court can only hold that Section 33 (2) (b) of the Act has not been complied with in respect of



W.P.No1214 of 2014

payment of one month wages.

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15. Once approval has not been given, it is deemed that dismissal orders are nonest and that the second respondent shall be reinstated. However, as already submitted, second respondent has reached the age of superannuation, thereby, he cannot be reinstated in respect of the backwages.

16. Learned counsel appearing for the second respondent has fairly submitted that the second respondent is not insisting for backwages. Therefore, the petitioner Corporation need not pay the back wages to the second respondent. What is now left is only continuity of service. Once the backwages are not insisting by the second respondent, continuity of service can be given notionally to the second respondent so that he will be benefited with some increments in the pension which he will be drawing after his retirement.

17. In view of the discussion made above and on perusal of the records, this writ petition is allowed in part. Since the second respondent has attained the age of superannuation, petitioner Corporation is directed



W.P.No1214 of 2014

to give continuity of service to the second respondent notionally without backwages and directed to revise the pension of the second respondent suitably. No costs.

1/7/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

Dr.D.NAGARJUN,J



WEB COPY



W.P.No1214 of 2014

mvs.

Pre-delivery order made in
W.P.No.1214 of 2014

1/7/2024