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W.A.No.974 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

CORAM

**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE P.DHANABAL**

**W.A.No.974 of 2023
and CMP.No.9676 of 2023**

The Management,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
rep.by its General Manager,
Railway Station New Road,
Kumbakonam 612 001.

... Petitioner/appellant

Vs.

1.The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai.

2.R.Jamindar

...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters patent to set aside the order dated 01.08.2021 passed by this Court in W.P.NO.22768 of 2016.

For Appellant : Mr.C.Senapathi

For Respondents : Mr.V.Ajaykhose

J U D G M E N T



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(Judgment of the Court was made by P.Dhanabal,J.)

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This Writ Appeal has been preferred challenging the dismissal order passed in W.P.No.22768 of 2016 ,wherein the appellant herein has filed the writ petition challenging the order passed by the 1st respondent in approval petition no.493/2011.

2. According to the appellant, the 2nd respondent herein while working as a Driver in the appellant Transport Corporation and while he was in service, in the year 2006, he contested the local body election and was elected as Panchayat Councillor on 25.10.2006. By suppressing the same, he worked as Driver in the appellant Corporation. Hence, the appellant issued Charge Memo dated 13.08.2008 against the 2nd respondent. Thereafter, the appellant Corporation had conducted domestic enquiry and found that all the charges were proved against the 2nd respondent and show cause notice was issued to him to get his explanation as to why he should not be dismissed from service. The 2nd respondent also issued reply on 25.06.2009 and after considering his reply, the Corporation dismissed him from service on 15.11.2011 and also issued cheque for a sum of Rs.7,130/- towards payment of one



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month salary. The appellant Corporation filed a petition under Section 33(2)(B) of the Industrial Disputes Act, before the Special Deputy Commissioner of Labour, Chennai / 1st respondent to get approval of the dismissal of the 2nd respondent. However, the 1st respondent declined to give permission for dismissal on the ground that the appellant did not conduct the enquiry following the principles of natural justice and had not paid full one month salary to the 2nd respondent. As against the said order, the appellant Corporation has filed a writ petition before this Court.

3. Before the Writ Court, both parties agreed for amicable settlement. Based on that, Writ Court passed the order that the Workman shall be deemed to be in service from the date of dismissal till the date of reinstatement and the past services rendered prior to the dismissal shall be taken into account as a continuous one. The workman is entitled to wages from the date of dismissal till the date of reinstatement. As against the consent order passed by the writ Court, the present Writ Appeal is preferred.

4. The learned counsel appearing for the appellant would contend



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permission . The Writ Court also failed to consider the grave charges and dismissed the writ petition. Therefore, the order passed by the Writ Court is liable to be set aside.

5. The learned counsel appearing for the respondents would contend that before the Writ Court, both parties agreed for reinstatement, if the employee workman is willing to give up backwages and the 2nd respondent also admitted that he was elected in the ward election. There was no remuneration from the said post. Subsequently, he was resigned from the post and as per the order passed by the approval authority, he has been reinstated in service on 23.01.2002 and he was also willing to give up the backwages from the date of dismissal till the date of reinstatement. However, the 2nd respondent requested that the period may be taken into account for the purpose of continuity of service. The said demand was accepted by the Management and they also agreed that if the workman is willing to give up the backwages, the case of the reinstatement granted on 23.01.2022 will not be disturbed. The Writ Court, after considering the above said submissions and after accepting the submissions of the parties, passed the impugned order. Therefore, the



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order is a consent order and now the appellant Corporation cannot agitate the said order through this appeal. Hence, the present appeal is liable to be dismissed.

6. This Court heard both sides and also perused the materials on record.

7. On perusal of the order passed by the Writ Court, it is seen that before the Writ Court, the learned counsel for workman made a suggestion that he is willing to give up the backwages from the date of dismissal till the date of reinstatement, if the said period may be taken into account for the purpose of continuation of service. The learned counsel for 2nd respondent Corporation also agreed for that and stated that if the workman is willing to give up the backwages, the case of reinstatement granted on 23.01.2002 will not be disturbed as he has been reinstated without prejudice to the right of the parties. In this context, the Writ Court made observations as follows:

"7. In reply, the learned counsel for the Workman contended that it is true that the Workman was elected in the Ward Election and there was no remuneration received for the said post.



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Subsequently, he resigned from the post and by an order of the Approval Authority, he has been reinstated in service on 23.01.2020. He further submitted that he is willing to give up the back wages from the date of dismissal till the date of reinstatement. However, the said period may be taken into account for the purpose of continuity of service.

8. The learned counsel appearing for the Management would submit that if the Workman is willing to give up the back wages, as contended by the learned counsel for the Workman, the case of reinstatement granted on 23.01.2020 will not be disturbed, as he has been reinstated without prejudice to the rights of the parties in the writ petition.

9. Taking note of the submissions made by both the parties and that the Approval Authority has rejected the Approval Petition, this Court passes the following order:

(1) Pursuant to the order of the Authority, the Workman shall be deemed to be in service from the date of dismissal till the date of reinstatement and the past services rendered prior to the dismissal shall be taken into account as a continuous one;

(2) The wages drawn by the Workman, if any, pursuant to the interim order of the Court shall not be adjusted or recovered;

(3) The Workman is entitled to wages from the date of dismissal till the date of reinstatement, namely, 23.01.2020, except the wages paid pursuant to the interim orders of



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the Court.

10. The order passed by the Authority, setting aside the dismissal order would mean that an order of dismissal is non-est in the eye of law. In view of the undertaking given by the Workman, wages payable to the Workman and other benefits shall be nationally fixed and the benefits shall be extended to the Workman with effect from the date of reinstatement, namely, 23.01.2020 within a period of four months from the date of receipt of a copy of this order. If there is any punishment during the past period, that has not been disturbed by this order, unless otherwise the same is questioned and interfered with by the Court.

11. With the above directions, this Writ Petition is disposed of. No costs."

8. The above said order of the Writ Court reveals that based on the admissions made by both sides counsels and with their consent, the Writ Court has passed the impugned order and now the appellant is estopped from denying his admissions made before the Writ Court. Therefore, the order passed by the Writ Court is a consent order and thereby, the present Writ Appeal has no merits and deserves to be dismissed.

9. In the result, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

(J.N.B,J.) (P.D.B., J.)
08.04.2024



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Internet : Yes/No

Speaking order : Non-speaking order

Neutral Citation : Yes/No

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To

The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai.



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and
P.DHANABAL, J.

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