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W.A. No. 3217 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 3217 of 2023

&

C.M.P. No. 26279 of 2023

The Management of
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Region,
Kavaraipettai Post,
Near Poonerikarai,
Bengaluru National Highways
Kancheepuram – 631 552.

..Appellant

Vs.

1. A. Dasarathan
2. The Special Joint Commissioner of Labour,
DMS Compound, Chennai – 600 018.

..Respondents



W.A. No. 3217 of 2023

Prayer: Writ Appeal as against the order dated 14.06.2023 made in
W.P. No. 12898 of 2021.

For Appellant :: Mr.T. Chandrasekaran

For Respondents :: Mr.M. Karthik for R1

J U D G M E N T

(Delivered by *S. Vaidyanathan,J.*)

The writ appeal has been directed against the order dated 14.06.2023 passed in W.P. No. 12898 of 2021.

2. The summation of facts which led to the filing of this writ appeal are as hereunder:

The 1st respondent/workman, who was working as a Driver in the appellant Transport Corporation, was issued with a charge memo for his unauthorized absence from 04.04.2012 to 17.06.2012 and pursuant to the disciplinary proceedings conducted, in which the charges framed against him were held proved, he was dismissed from service by order dated 16.12.2021. Thereafter, the appellant Transport Corporation had filed an



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approval petition under Section 33(2)(b) of the Industrial Disputes Act, 1947, before the Special Deputy Commissioner of Labour, Chennai and by order dated 16.10.2018, the said petition came to be rejected, challenging which W.P. No. 12898 of 2021 came to be filed and by the order under challenge, the writ petition was also dismissed confirming the order passed by the 2nd respondent herein. Aggrieved by the said dismissal, the Transport Corporation is before this Court by way of this intra court appeal.

3. According to the learned counsel for the appellant, the 2nd respondent ought not to have rejected the approval petition as the order of dismissal of the employee was passed after conducting proper domestic enquiry following due process of law. According to the learned counsel for the appellant, the unauthorised absence of the 1st respondent has caused great inconvenience to the general public and also loss to the appellant Transport Corporation. Moreover, the employee is an habitual unauthorised absentee and has been imposed with several punishments in the past for such misconduct and despite several opportunities having been given, he has not availed the same to mend his ways. Besides, according to the



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appellant, the workman himself had admitted that he had absented himself unauthorisedly due to illness before the Enquiry Officer and the explanation furnished by him was also found to be unsatisfactory and not substantiated with documents. For all the above reasons and the charges having been held proved against the employee, the dismissal order was passed by the appellant Transport Corporation. Therefore, the learned counsel would submit that the rejection of the approval petition by the 2nd respondent and the confirmation of the same by the learned Single Judge is unsustainable.

4. On the other hand, it is contended on behalf of the 1st respondent/workman that the writ petition filed by the Management challenging the rejection of the approval petition was rightly dismissed by the learned Single Judge after considering all the relevant materials on record and no interference is called for.

5. Heard the learned counsel on either side.

6. When the matter came up for hearing on 10.01.2024, this Court



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passed the following order:

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"The matter has been heard in detail.

2. *Learned counsel for the appellant Corporation produced G.O.Ms. No. 245 Finance (Allowances) Department dated 10.10.2014 and submitted that a perusal of the said Government Order would make it very clear that it is applicable only to Government employees. He would further submit that based on the representation made by the employees of the Transport Corporation, the benefit of the Government Order has been extended to the employee after the dismissal of the employee concerned. Hence, there was no occasion in which the benefit of Government Order was extended enabling the authority to hold that there was shortfall of payment of one month's wages. He would further contend that all the documents were produced and that the authority ought not to have rejected the approval petition.*

3. *We are not in agreement with the contention that it is suffice to produce the findings of the Enquiry Officer and not enquiry proceedings. The enquiry proceedings ought to have been filed as it is the duty of the authority to verify the proceedings and come to the conclusion as to whether the findings are based on the said enquiry proceedings.*

4. *Learned counsel for the Corporation submitted that, in order to give a quietus to the matter, if an order is passed granting compulsory retirement, the appellant Corporation would comply with the same.*



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5. *Learned counsel for the workman submitted that the workman has got hardly seven more months of service and that the order passed by the authority was perfectly valid, which was rightly confirmed by the learned Single Judge.*

6. *On a perusal of the Government Order, it is evident that the said Government Order was not applicable to the employee on the date of dismissal from service. On the ground of failure to furnish the enquiry proceedings, we are inclined to remand the matter for fresh consideration by the authority on production of enquiry proceedings. At this stage, learned counsel for the employee would submit that he will ascertain from the employee as to whether he is willing to accept compulsory retirement with effect from 16.12.2014 in order to enable him to get pensionary and other terminal benefits and give a quietus to the issue on hand.*

7. *Post on 18.01.2024.”*

7. When the matter is taken up today, the learned counsel for the 1st respondent/workman, in the light of the submission made by him on the earlier occasion that he would ascertain whether the workman is willing to accept compulsory retirement with effect from 16.12.2014, would state that the 1st respondent/workman is ready to accept compulsory retirement and an affidavit dated 22.01.2024 has also been filed by the workman, the contents



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of which are scanned and reproduced below:

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Appellate Side Jurisdiction)

W.A.No.3217 of 2023

Against

W.P.No.12898 of 2021

The Management
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd.,
Kancheepuram National Highways,
Karsipettai Post, Near Poonerikari,
Kancheepuram-631 552.

...Petitioner/ Appellant

-Vs-

1. A.Dasuratham
Driver(S.No.41908),
Koyambodu-4 Workshop,
No.24/B, Selva Ganapathy Avenue,
Seevaram, Perungudi,
Chennai-600 096.

2. The Special Joint Commissioner of Labour
Chennai-600 018.

...Respondents/Respondents

AFFIDAVIT FILED BY THE 1ST RESPONDENT/1ST RESPONDENT

I, A.Dasuratham son of Ayyothi, Hindu, aged about 59 years, residing at No.24/B, Selva Ganapathy Avenue, Seevaram, perungudi. Chennai-600 018, do hereby solemnly affirm and sincerely state as follows:-

1. I submit that I was working as Diver (S.No.41908) in Koyambodu-4 Workshop. I was illegally terminated from the service by an order dated on 16.12.2014 to get approval for the said order of termination of the petitioner/appellant management had filed petition under Section 33(2)(b) of

A. Dasuratham



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the Industrial Dispute Act, before the 2nd respondent in A.P.No.318 of 2014 the same was rejected on 16.10.2018.

2. I submit that even after the rejection of approval petition the petitioner has failed to provide the employment to me without any valid reason. I continuously made oral representations requesting the petitioner/appellant to reinstatement with back wages and continuity of service and all other attendant benefits. But the petitioner has failed to do so without any reason. Thereafter the petitioner/appellant has filed Writ petition before this Hon'ble Court in W.P.No.12898 of 2021 the same was dismissed on 14.06.2023 by this Hon'ble Court.
3. I submit that I already expressed my willingness to report duty but the petitioner/appellant has failed to reinstate me in service. I am without employment from the date of my termination i.e., 16.12.2014 and I am not gainfully employed anywhere. I am without employment for last 9 years and I am struggling without any income from the date of my termination. Therefore I am entitled to get last drawn wages under section 17-B of the Industrial Dispute Act, from the date of the Order i.e., 16.10.2018 in A.P.No.318 of 2014 to till the date of disposal of the above writ appeal.
4. I submit that I met accident when I was in the duty of the petitioner/appellant corporation and took treatment on 04.04.2012 and surgery was also conducted and I was rejoined on 17.06.2012 the petitioner/appellant was refused to join me. Subsequently the proceeding was taken against me on 10.06.2012 due to absence of 04.04.2012 onwards.

[Handwritten signature]



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5. I submit that based upon my health issues I was given my explanation on 02.08.2017. Thereafter the writ petition was dismissed and the petitioner/appellant has filed a Writ Appeal before this Hon'ble Court in W.A.No.3217 of 2023 the same was pending. I further submit that I was in the struggle more than 11 years and I have three daughters namely 1.D.Sivaranjini(30), 2.D.Sivasundari(28), 3. D.Sivapriya(26) without any income from my daughters all are depend my income only.

6. I submit that I have no own house still now I am residing in the above address as tenant in every month rent Rs.12,000/-. I spend medical treatment a sum of Rs.8,000/- per every month. I have three daughters and my wife so I spend lot of money to family in every month without my job so I cannot able to manage to run my family very peaceful manner.

7. I submit that I am sole bread winner of my family with help of the pension benefits only I am able to manage my family expenses and my daughters marriage expenses and my medical expenses for myself and for my wife.

Hence, I request this Hon'ble court to consider this affidavit as a consent affidavit to Compulsory retirement from service and give the pension benefits till the disposal of the writ appeal.

In such circumstances it is prayed that this Hon'ble Court may be pleased to record this affidavit and pass such further or other orders as this Hon'ble Court may deem to fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Chennai this
the 2nd day of January 2024 and
signed his name in my presence.

BEFORE ME
P. M. ... 22/1/2024
ADVOCATE: CHENNAI
(M. Murali Krishna)
No. 44/3, Anna Complex,
First Floor, Teymangal
Anna Salai Chennai - 60.



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S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.

nv

It is evident from paragraph No.7 of the affidavit dated 22.01.2024 that the workman has given consent for compulsory retirement. In view of the same, *the writ appeal stands disposed of* modifying the punishment of dismissal from service imposed to one of compulsory retirement with effect from 16.12.2014. The appellant Transport Corporation, as per its communication dated 11.01.2024, shall disburse pensionary and other terminal benefits to the employee and arrears, if any, upto 31.01.2024, within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected C.M.P. is closed.

nv

(S.V.N.J.) (K.R.S.J.)
02.02.2024

To
The Special Joint Commissioner of Labour,
DMS Compound, Chennai – 600 018.

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