



WP.(MD).Nos.3951 of 2022 and 28444 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.3951 of 2022 and 28444 of 2023
and
W.M.P.(MD)No.3396 of 2022

W.P.(MD)No.3951 of 2022 :-

The General Management,
Tamil Nadu State Transport Corporation Madurai Ltd,
Dindigul Region,
Bye Pass Road,
District Collector Office Post,
Dindigul – 624 004. ... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
O/o. Commissioner of Labour,
Chennai – 600 006.

2.S.Thangavel ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned order dated 05.11.2021 passed by the first respondent in A.P.No.73 of 2011 as illegal and quash the same.

For Petitioner : Mr.J.Senthil Kumaraiah
For 2nd Respondent : Mr.S.Govindan



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W.P.(MD)No.28444 of 2023 :-

S.Thangavel

... Petitioner

Vs.

- 1.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd,
Byepass Road, Madurai – 16.
 - 2.The General Manager,
Tamil Nadu State Transport Corporation Madurai Ltd,
Dindigul Region, Dindigul – 4.
 - 3.The Administrator,
Tamil Nadu State Transport Corporation Employees Pension
Fund Trust, Thiruvalluvar Illam, Palavan Salai,
Chennai – 2.
- ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records connected with impugned order passed by the first respondent in Parvai : LDS/WP/64/2022 dated 04.11.2023, quash the same and consequently direct the respondents to grant Provisional Pension from the date of retirement on 30.04.2015 and also 16 months unpaid subsistence allowance along with interest in terms of Rule 19 B of the Tamil Nadu State Transport Corporation employees Pension Fund Rules and in the light of the Judgment of this Court reported in 2023-IV-LLJ-467 (Mad) dated 24.08.2023.

For Petitioner : Mr.S.Govindan
For Respondents 1 & 2 : Mr.Senthil Kumaraiah
Standing Counsel
For 3rd Respondent : Mr.S.C.Herold Singh
Standing Counsel



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ORDER

W.P.(MD)No.3951 of 2022 has been filed for issuance of a Writ of Certiorari, to quash the impugned order passed by the first respondent in A.P.No.73 of 2011 dated 05.11.2021 and W.P.(MD)No. 28444 of 2023 has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in Parvai : LDS/WP/64/2022 dated 04.11.2023 and to direct the respondents to grant Provisional Pension from the date of retirement on 30.04.2015 and also 16 months unpaid subsistence allowance along with interest in terms of Rule 19 B of the Tamil Nadu State Transport Corporation employees Pension Fund Rules and in the light of the Judgment of this Court reported in 2023-IV-LLJ-467 (Mad) dated 24.08.2023.

2.The brief facts, which are necessary for the disposal of these Writ Petitions is as follows:-

(i)The petitioner is the Tamil Nadu State Transport Corporation Madurai Limited, Dindigul region represented by its General Manager. The second respondent was employed as a Conductor in the petitioner Corporation from 04.12.1981. On 11.11.2009, the second respondent while he was performing duty



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in bus bearing Registration No.TN-57-N-1170, at the time of secret checking, the Checking Inspector found that he had misappropriated a sum of Rs.55/- without issuing tickets to a group of 5 passengers. Therefore, the petitioner Management issued a charge memo. Following which, a domestic inquiry was conducted after affording fair opportunity to the second respondent. After affording sufficient opportunity to him, the Inquiry Officer submitted a report holding that the charges levelled against him stands proved. Following which, he was sought with further explanation and on receipt of the same, not being satisfied with the said explanation, taking into account that he had totally committed 5 previous misconducts and 111 other misconducts for which, he had undergone several punishments, he was dismissed from service on 23.02.2011 by considering his previous misconduct and gravity of the current charges.

(ii)Thereafter, the petitioner Corporation approached the first respondent for want of approval to dismiss the second respondent from service by way of filing A.P.No.73 of 2011 under Section 33(2) (b) of the Industrial Dispute Act. On 27.12.2012, the first respondent had passed order rejecting the said Approval Petition.



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Challenging the same, the Management filed W.P.(MD)No.14394 of 2014 before this Court and this Court by its order dated 21.04.2021 remitted back the matter to the first respondent for deciding afresh. Thereafter, the learned Labour Court has once again considered the case of the second respondent, which was remitted back to him and after trial by order dated 05.11.2021, the first respondent once again refused to grant approval. Challenging the said impugned order, W.P.(MD)No.3951 of 2022 came to be filed.

(iii)The second respondent in W.P.(MD)No.3951 of 2022 is the writ petitioner in W.P.(MD)No.28444 of 2023 and the petitioner Corporation in W.P.(MD)No. 3951 of 2022 is the respondent in W.P. (MD)No.28444 of 2023. The respondent Corporation filed an Approval Petition in A.P.No.73 of 2011 under Section 33(2)(b) of the Industrial Disputes Act before the Commissioner of Labour, Chennai seeking approval for having dismissed the writ petitioner from service. The authority after perusing the records and after hearing both sides had rejected the Approval Petition filed by the respondents on the ground that the domestic enquiry was not conducted in accordance with the principles of natural justice and also on the ground of non-payment of subsistence allowance to the



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petitioner for 16 months by order dated 27.12.2021 and held the charges were not proved based on the oral and documentary evidence. On the receipt of the rejection of the Approval Petition dated 27.12.2012 from the learned Labour Court, the petitioner submitted a detailed representation on 05.08.2013 requesting the respondent Corporation to reinstate the petitioner into service with continuity of service with back wages and all other monetary benefits. The petitioner is entitled to be reinstated into service with continuity of service with back wages and all other attendant benefits. The respondents instead of reinstating him into service had challenged the rejection of the approval rejection order in A.P. No.73 of 2011 by filing W.P.(MD)No.14391 of 2014 before this Court. The petitioner was granted 17(B) wages pending Writ Petition as the respondent Corporation, challenged the order passed by the learned Labour Court on 11.03.2015 in the Approval Petition. The petitioner after attaining his age of superannuation on 30.04.2015, 17(B) wages which was received by him was also subsequently stopped. The Writ Petition in W.P.(MD)No.14391 of 2014 was taken up for final hearing on 21.04.2021 and on the basis of the respondent Corporation, which insisted for remanding the case again before the Approval Authority for fresh hearing as the



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respondent was not given sufficient opportunity for submitting the documents by the Authority, this Court remanded the case back to the learned Labour Court by order dated 21.04.2021.

(iv) On remission of the matter back to the learned Labour Court, the Approval Petition A.P.No.73 of 2011 was once again reopened and on the basis of the documents of both the sides, the evidence let in and the arguments put forth by the respective parties, the learned Labour Court by order dated 05.11.2021 once again dismissed the said Approval Petition. As such, the petitioner is entitled to provisional pension not exceeding the maximum pension which would have been admissible on the basis of qualifying service upto the date of his retirement on 30.04.2014 since the said approval petition in AP No.73 of 2011 is dismissed. However, even the provisional pension is not granted to the petitioner so far. The petitioner is eligible to get provisional pension in terms of Rule 19(b) of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules. Though as on the date of the rejection of the approval petition in A.P.No.73 of 2011, the petitioner is eligible to get full pension but however, the same was not sanctioned and hence, he is eligible at least to get



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provisional pension in terms of the order of business. Since the same was not provided to the petitioner, the petitioner had filed W.P.(MD)No.64 of 2022 before this Court for the said purpose and this Court by its order dated 27.06.2023 directed the respondent Corporation to pass an order as regards the eligibility of the petitioner for getting provisional pension. Pursuant to the said order, the respondent Corporation by the impugned order dated 04.11.2023 had rejected the claim of the petitioner seeking provisional pension on the ground that the petitioner has been permanently dismissed from service with effect from 23.02.2011 and hence, he is not entitled for provisional pension. Challenging the impugned order of the respondent dated 04.11.2023, W.P. (MD)No.28444 of 2023 came to be filed.

3.Heard the learned counsel for the Transport Corporation, the learned counsel for the delinquent and carefully perused the materials available on record apart from the pleadings of the parties.

4.The delinquent was a Conductor and had been terminated from service by the transport Corporation by order dated



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23.02.2011 on the charge of misappropriation. Following this, the Transport Corporation made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947, (hereinafter referred to as the 'Act' for short) for approval of termination, but it was rejected by order dated 27.12.2012 in A.P.No.73 of 2011. Aggrieved by the same, the petitioner Transport Corporation filed W.P.(MD)No.14391 of 2014 and this Court by its order dated 21.04.2021, has passed an order remitting back the matter back to the first respondent Labour Court by setting aside the order passed by the first respondent on 27.12.2021 and the operative portion of the same is extracted as follows:-

“8. The result of the foregoing discussion is that the impugned order dated 27.12.2012 in A.P. No. 73 of 2011 passed by the First Respondent, which cannot be sustained, is set aside and the matter is remitted back to the First Respondent for deciding the matter afresh in the required manner. In order to expedite disposal, the matter shall be listed for hearing before the First Respondent at 11.00 a.m. on 22.07.2021 when the Petitioner and the Second Respondent shall appear in person or through their authorized representative. If the First Respondent is not in a position to take up the matter for hearing on that date, it shall inform all parties concerned of the date of hearing to which it is adjourned in the prescribed manner. It shall be ensured by the First



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Respondent that there is atleast one effective hearing every week showing progress of the case, that full opportunity of hearing is afforded to all parties concerned following the prescribed procedure in consonance with the principles of natural justice, that reasoned orders are passed dealing with each of the contentions raised by them on merits and in accordance with law, that the decision taken is communicated to the concerned parties under written acknowledgment and that proof of such compliance is filed by 31.10.2021 before the Registrar (Judicial) of this Court. Though obvious, it is made clear that while deciding the matter, the First Respondent shall not be inhibited or influenced by the impugned order, which has been set aside."

5. On remission, the first respondent Labour Court had reopened the Approval Petition in A.P.No.73 of 2011 and on the basis of the evidence let in by both the parties, the arguments put forth and the materials available on record, proceeded to consider the case afresh. The first respondent Labour Court had examined the application for approval made by the petitioner with reference to the relevant aspects as stipulated in the decision of Hon'ble Supreme Court of India in **Lallaram V. DCM Chemical Works Ltd**, reported in **1978 (3) SCC 1** on the following parameters:-

"(i) whether a proper domestic enquiry in



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accordance with the relevant rules/Standing Orders and principles of natural justice has been held;

(ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out;

(iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee;

(iv) whether the employer has paid or offered to pay wages for one month to the employee; and

(v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him.”

6.The first respondent Labour Court came to a conclusion that the requirement in items 1, 3, 4 and 5 had been satisfied and in respect of the aspects in item No. 2, it was held that the domestic enquiry was not conducted following the Rules, standing orders, principle of natural justice and as a result of which, *prima facie* case has not been made out and as such, approval cannot be granted in A.P.No.73 of 2011 by its order dated 05.11.2021. Thus, the learned Labour Court has held it in favour of the delinquent



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employee rejecting the petitioner Transport Corporation's approval petition in A.P.No.73 of 2011 for the second time despite the matter has been remitted back by this Court for reconsideration.

7.Now, the only point which has to be decided is as to whether the delinquent employee is entitled to be reinstated back into service on the rejection of A.P.No.73 of 2011 by the learned Labour Court for the second time by its order dated 05.11.2021. The Hon'ble Apex Court in the case of **Tamil Nadu State Transport Corporation V. Neethivilangan, Kumbakonam** reported in **(2001) 9 SCC 99** has dealt with a similar case and the relevant portion of which is extracted as follows:-

“From the conspectus of the views taken in the decisions referred to above the position is manifest that while the employer has the discretion to initiate a departmental inquiry and pass an order of dismissal or discharge against the workman the order remains in an inchoate state till the employer obtains order of approval from the Tribunal. By passing the order of discharge or dismissal de facto relationship of employer and employee may be ended but not the de jure relationship for that could happen only when the Tribunal accords its approval. The relationship of employer and employee is not legally terminated till approval of discharge or



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dismissal is given by the Tribunal. In a case where the Tribunal refuses to accord approval to the action taken by the employer and rejects the petition filed under section 33 (2)(b) of the Act on merit the employer is bound to treat the employee as continuing in service and give him all the consequential benefits. If the employer refuses to grant the benefits to the employer the latter is entitled to have his right enforced by filing a petition under Article 226 of the Constitution. There is no rational basis for holding that even after the order of dismissal or discharge has been rendered invalid on the Tribunals rejection of the prayer for approval the workman should suffer the consequences of such invalid order of dismissal or discharge till the matter is decided by the Tribunal again in an industrial dispute. Accepting this contention would render the bar contained in section 33(1) irrelevant. In the present case as noted earlier the Tribunal on consideration of the matter held that the employer had failed to establish a prima facie case for dismissal/discharge of the workman, and therefore, dismissed the application filed by the employer on merit. The inevitable consequence of this would be that the employer was duty bound to treat the employee as continuing in service and pay him his wages for the period, even though he may be subsequently placed under suspension and an enquiry initiated against him."

8.In yet another case, a five Judges Constitutional Bench of



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the Hon'ble Apex Court in the case of **Jaipur Zilla Sahakari**

Bhoomi Vikas Bank Limited versus Ram Gopal Sharma and

others reported in **2002 -1-LLJ-280** has dealt with a similar issue

and the relevant portion of which is extracted as follows:-

“Where an application is made under Section 33(2) (b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all



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the benefits available. This being the position there is no need of a separate or specific order for his reinstatement.”

9.In the instant case, after the disciplinary proceedings initiated by the petitioner Transport Corporation Management, the delinquent Conductor was dismissed from service by order dated 23.02.2011. Thereafter, an Approval Petition in A.P.No.73 of 2001 came to be filed by the Transport Corporation Management before the Approval Authority on 05.11.2011. After conducting elaborate trial on the basis of the evidences letting the available documents and the arguments put forth by the respective parties, the Approval Authority rejected the Approval Petition in A.P.No.73 of 2011 by order dated 27.12.2011. Challenging the same, the Corporation Management preferred W.P.(MD)No.14391 of 2014 and this Court by its order dated 21.04.2021 had set aside the rejection order passed by the Approval Authority on 27.12.2011 and thereafter, remitted the same back to the approval authority for fresh adjudication. Pursuant to the same, A.P.No.73 of 2011 was reopened by the Approval Authority and after elaborate consideration, has once again rejected the said Approval Petition refusing to approve the termination of the delinquent dated



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23.02.2011.

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10. In view of the discussions made by the Hon'ble Supreme Court in the judgments extracted supra, it is no more *res integra* that, if approval is not duly given by the Approval Authority nothing more is required to be done by the delinquent as it will have to be deemed that the order of termination dated 03.02.2011 has never been passed. Consequent to it is that, the delinquent is deemed to have continued in service entitling him to all the benefits and the same is automatic. At this point, I reiterate that there is no need for a separate or specific order for his reinstatement. Taking into account that the learned Labour Court had considered the case of the delinquent and that of the petitioner Transport Corporation seeking approval of the termination of the petitioner dated 23.02.2011 and has held favourably to the petitioner rejecting the Approval Petition twice, this Court is not inclined to interfere with the impugned order of rejection in Approval Petition in A.P.No.73 of 2011 dated 05.11.2021. Since on rejection of Approval Petition refusing to approve the termination of the petitioner dated 23.02.2011, the delinquent Conductor is deemed to have been reinstated automatically with effect from the date of termination



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that is from 23.02.2011 and the said exercise is automatic. Since the Approval Authority refused to approve the Approval Petition as early as in the year 2011 itself in the first instance of 05.11.2011, the delinquent employee is deemed to have been reinstated with effect from the date of termination in lieu of the order passed by the Approval Authority on 05.11.2011 itself. Thereafter, the delay caused for the disposal of the Approval Petition in A.P.No.73 of 2011 afresh cannot be attributed to the delinquent employee but the same is attributable only to the Transport Corporation Management, since it is the Transport Corporation Management which took the matter before this Court by filing W.P.(MD)No.14391 of 2014 challenging the rejection order in A.P.No.73 of 2011 dated 27.12.2011. Consequently the same was remanded back to the learned Labour Court and the same was once again reopened afresh for proper consideration and negating the Transport Corporation Management's submissions once again the Approval Petition came to be rejected on 05.11.2021.

11.Hence, all along I have no hesitation to observe that the delinquent employee is deemed to have been reinstated back in service from the date of his termination dated 23.02.2021 as early



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as when the first rejection order of approval petition in A.P.No.73 of 2011 came to be passed in 05.11.2011. In view of the same, it is necessary to quash the impugned order passed by the first respondent vide proceedings in LDS/WP/64/2022 dated 04.11.2023 declining grant of provisional pension to the delinquent employee and accordingly, the same is quashed.

12. Accordingly, W.P.(MD)No.3951 of 2022 is dismissed and W.P.(MD)No.28444 of 2023 is disposed of directing the respondent Transport Corporation to reinstate the petitioner with all monetary benefits including back wages. Since the delinquent has already attained the age of superannuation on 30.04.2015, the respondent Transport Corporation Management is directed to permit the delinquent employee to retire from service with all monetary benefits. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

- 1.The Special Deputy Commissioner of Labour,
O/o. Commissioner of Labour,
Chennai – 600 006.
- 2.The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd,
Byepass Road, Madurai – 16.
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L.VICTORIA GOWRI, J.

Mrn

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