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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.7957 of 2023

B.Seenivasan

... Petitioner

Vs.

The General Manager,
Tamil Nadu State Transport Corporation Limited,
(Madurai Division-V),
No.6/377, Madurai Road,
Virudhunagar – 626 001.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the respondent in Parvai:Tha.A.Po. Ka/Virudhu/Nirvagam/A1/263/2022 dated 15.11.2022 and quash the same and further direct the respondent to pass order to release the monetary benefits from 28.01.2003 with continuity of service with back wages.

For Petitioner : Mr.N.Tamilmani

For Respondent : Mr.K.Ramaiah
Standing Counsel



and decreed the suit as prayed for by the judgment and decree dated 28.01.2003.

Challenging the said judgment and decree of the first appellate Court, the Management had filed S.A.No.1368 of 2003 before this Court. This Court after considering all the issues, including the maintainability of the suit, had dismissed the Second Appeal on 08.10.2018. This judgment and decree of the High Court has attained finality.

4.After a period of 4 years from the date of dismissal of the second appeal, the present impugned order has been passed by the respondent transport corporation on 15.11.2022 to the effect that the petitioner shall be deemed to have reinstated in service on 28.01.2003(the date on which the first appeal was allowed) with continuity of service but without backwages. The petitioner was permitted to retire w.e.f.31.05.2014. This order is challenged by the employee on the ground that he should have been paid the backwages also for the said period of non-employment.

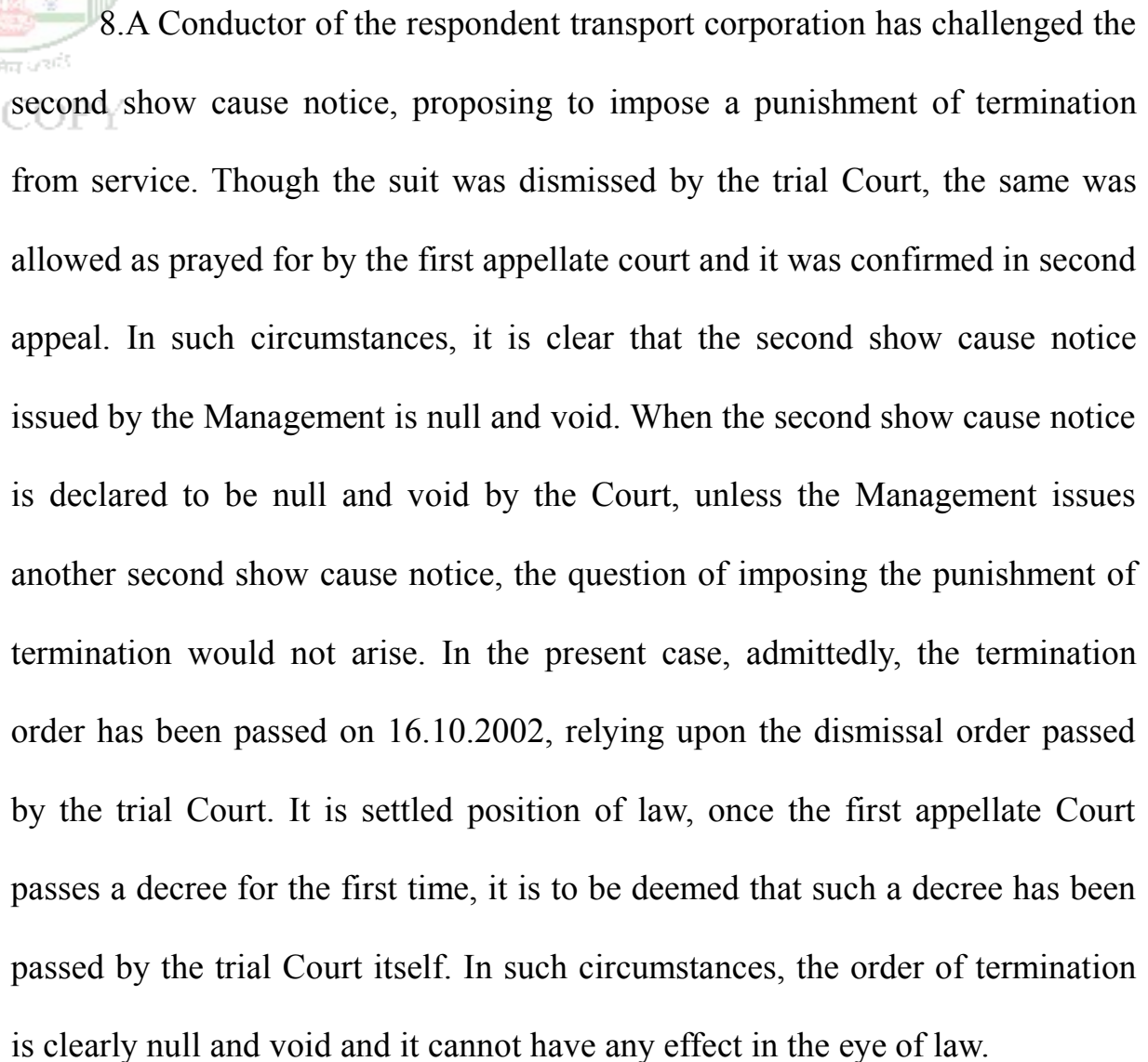
5.According to the learned Counsel appearing for the writ petitioner, the petitioner has challenged the second show cause notice by way of filing a civil suit. Immediately after the suit was dismissed, the authorities have proceeded to pass on order of termination. However, the second show cause notice was held



to be null and void by the first appellate Court and it was confirmed by the High Court. In such circumstances, the termination order becomes invalid and the petitioner would be entitled to all the monetary benefits for the period of his non-employment.

6.Per contra, the learned Standing Counsel appearing for the respondent had contended that the petitioner having been terminated on 16.10.2002, he was deemed to have been reinstated only on 28.01.2003, the date on which the first appeal was allowed. The learned Standing Counsel appearing for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Pradeep Vs. Mangnese Ore(India) Limited and others*** reported in **2022 (3) SCC 683** to impress upon the Court that when there is a wrongful termination and ultimately the Court finds that termination was found to be unjustified, even in a such case, the payment of backwages is not automatic, but it is the discretion of the Court.

7.I have carefully considered the submission made on either side and perused the materials available on record.



9. The first appellate Court had decreed the suit as prayed for on 28.01.2003. Even, thereafter, the petitioner was not reinstated in service. Therefore, the petitioner would be entitled to backwages atleast from 28.01.2023 onwards. However, that has also been rejected under the order impugned in the writ petition. Therefore, it is clear that when the second show



cause notice has been held to be invalid and under the impugned order, the respondent Management had reinstated the petitioner w.e.f.28.01.2003 itself, the Management has to pay the salary atleast from 28.01.2003 onwards, if not from the date of dismissal namely on 16.10.2002.

10. When the respondent Management has chosen to accept the civil Court decree and has proceeded to notionally reinstate the petitioner w.e.f. 28.01.2003, thereafter, they cannot deny the backwages, especially in the light of the fact that the second show cause notice issued by the Management has been held to be null and void.

11. In view of the above said deliberations, the order impugned in the writ petition with regard to rejection of the backwages is hereby set aside. There shall be a direction to the respondent transport corporation to pay the backwages from 28.01.2003 onwards with all consequential monetary benefits within a period of twelve weeks from the date of receipt of a copy of this order.



12. With the above said observations, this writ petition stands allowed. No costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
RJR

To

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R.VIJAYAKUMAR, J.

RJR

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