



WA(MD). No.607 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 19/06/2024

CORAM

**Justice N.SESHASAYEE
and
Justice L.VICTORIA GOWRI**

**WA(MD). No.607 of 2019 and
WMP(MD) No.4962 of 2019**

The Management
Tamil Nadu State Transport Corporation
Kumbakonam IV Limited
Rep. by its General Manager
Thirumayam Road
Pudukottai.

... Appellant/Respondent

Vs

K.Nallathambi

... Respondent/
Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 22.03.2018 in WP(MD) No.21316 of 2014.

For Appellant : M/s.SC.Herold Singh
For Respondent : Mr.A.Rahul

JUDGMENT

(Judgment of the Court was delivered by N.SESHASAYEE, J.)

This appeal is preferred challenging the order in WP(MD) No. 21316/2014, which was filed by the respondent herein challenging the



WA(MD). No.607 of 2019

order of dismissing the respondent from service. The learned single Judge has also directed that all the benefits be conferred upon the respondent.

2. Before getting into the order of the learned single Judge, it is necessary to provide a brief narration of the facts obtaining in this case:

- The respondent herein was appointed as a driver by the appellant herein, sometime in 1985. According to the appellant, he is habituated to absent himself without leave. One such occasion occurred between 06.03.2001 and 04.08.2001. When the respondent absented himself without leave between these days, on 31.03.2001, a show cause notice was issued on the respondent for his unauthorized absence from duty. It resulted in a domestic enquiry and ended in an order terminating his services by the appellant;
- The workman raised an industrial dispute, when he moved the labour Court concerned in ID No.130/2003. On 10.07.2012, the Labour Court passed an award directing the reinstatement of the workman, but without any backwages or other benefits;
- On 06.09.2013, the Management issued an order reinstating the



WA(MD). No.607 of 2019

workman. Habits rarely die hard and the workman took to his habituated ways and is alleged to have absented again unauthorizedly. Taking into consideration the earlier conduct of the workman, as well as the nature of the award passed by the Labour Court, the Management had issued a proceedings dated 24.10.2014 treating the reinstatement of the workman as a fresh appointment.

3. This order of the Management came to be challenged by the workman in WP(MD) No.21316/2014. The management/respondent before the learned Single Judge, however, did not file its counter. In his cryptic order, the learned Single Judge has observed that when once the order of dismissal is set aside, the attendant benefits necessarily should follow and directed that the respondent's appointment could not be treated as a fresh appointment. This order of the learned Single Judge is now under challenge.

4. Heard the learned counsel for the appellant.

5. The learned counsel submitted that inasmuch as the Labour Court



WA(MD). No.607 of 2019

has not directed payment of backwages or other related benefits, necessarily it has to be treated as a fresh appointment. He also added that the habituated ways of the respondent to absent himself unauthorizedly has landed him in yet another domestic enquiry and he was eventually terminated from service on 08.03.2015, about a month and a half before he reached the age of superannuation. He submitted that this order of termination was later approved by the labour Court. He, however, conceded that, the last mention facts have not been brought to the notice of the learned single Judge. The learned counsel added that inasmuch as the appellant was terminated second time after the arising of the cause of action for the present writ petition, but before the disposal of the petition by the learned Single Judge, the order of the learned single Judge could not be given effect to.

6. The learned counsel for the respondent informed the Court that he is not able to contact his client. The matter is pending since 2019, and this case necessarily has to be given quietus. If the submission of the learned counsel for the appellant is carefully scrutinized, it discloses that he seeks a reversal of the order of the learned Single Judge based on



WA(MD). No.607 of 2019

certain subsequent facts, which have taken place during the pendency of the said writ petition. But as the learned counsel had fairly conceded that the appellant had not filed a counter. In these circumstances, with the respondent's counsel handicapped to assist the Court, this Court deems it appropriate to set aside the order of the learned Single Judge and remand the matter back to the learned Single Judge for a *de novo* consideration. In the meantime, the appellant herein is permitted to file its counter along with all supporting documents before the learned Single Judge.

7. The writ appeal is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

(N.S.S.,J.) (L.V.G.,J.)
19.06.2024

NCC : Yes/No
Index : Yes/No
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WA(MD). No.607 of 2019

N.SESHASAYEE, J.
and
L.VICTORIA GOWRI, J.

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WA.(MD)No.607 of 2019

19.06.2024