



W.A(MD)No.1079 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A(MD)No.1079 of 2022

N.Paulraj

... Appellant

VS.

The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Karaikudi Region, Marudhupathi,
Managiri, Karaikudi-630 307.

... Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the order dated 12.04.2022 in W.P(MD)No.5190 of 2021.

For Appellant : Ms.A.Amala
For Respondent : Mr.K.Jagadees Balan

JUDGMENT

(Judgement of the Court was made by **R.SUBRAMANIAN, J.**)

The appellant is aggrieved by the order of the learned Single Judge dismissing his writ petition seeking a Mandamus for reinstatement.



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2. The brief facts are as follows:

The petitioner who was working as a driver in the respondent State Transport Corporation, was dismissed from service by an order dated 21.05.2012. The Corporation approached the Special Deputy Commissioner of Labour, Chennai, seeking approval of the said dismissal order as provided under Section 33(2)(b) of the Industrial Disputes Act 1947. The Special Deputy Commissioner of Labour by his order dated 22.08.2013, dismissed the application for approval. This order was subject matter of challenge in W.P(MD)No.20216 of 2014 which came to be dismissed on 26.11.2020. Immediately thereafter, the petitioner sent a representation seeking reinstatement on 29.01.2021. Since there was no response from the Corporation, he has filed the instant writ petition on 05.03.2021. The learned Single Judge has dismissed the writ petition on two grounds. The first ground is that the petitioner has not challenged the dismissal order and the second ground is that he has alternative remedy before the Labour Court.

3. We have heard Ms.A.Amala, learned counsel appearing for the appellant and Mr. K.Jagadees Balan, learned counsel appearing for the respondent.



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4. Ms.Amala learned counsel appearing for the appellant would vehemently contend that once an application under Section 33(2)(b) of the Industrial Disputes Act 1947, is dismissed, the employee continues to be in service as if the discharge or dismissal order was never passed. Therefore, the learned Single Judge was wrong in concluding that the employee has not challenged the order of dismissal. The order of dismissal becomes *non est* upon the approval petition being rejected by the Special Deputy Commissioner of Labour.

5. In the case on hand, we find that the said order rejecting the approval petition has also been affirmed by this Court in a writ petition. Hence, the dismissal of the writ petition on the ground that the employee has not challenged the order of dismissal, cannot be sustained. On the plea of alternative remedy also, we find that the learned Single Judge was not right in concluding that the alternative remedy will be a bar for invoking the jurisdiction under Article 226 of the Constitution of India. Once the prayer sought for in the writ petition is not dependent on establishment of facts, then this Court can always exercise jurisdiction under Article 226 of the Constitution *de hors* the availability of alternative remedy. Availability of



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alternative remedy is not an absolute bar for exercising jurisdiction under Article 226.

6. On facts, we find that the order of dismissal was passed in the year 2012. The approval petition was dismissed in 2013. The Corporation challenged the said order by way of a writ petition and the writ petition was pending for almost six years. It was finally disposed of on 26.11.2020. Immediately thereafter, the petitioner has approached this Court. Therefore, driving the petitioner to the Labour Court again would only result in rubbing salt in the wound. The fact that the Corporation was unable to get approval for the order of dismissal would show that the charges were not properly established.

7. The Hon'ble Supreme Court in **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., vs. Ram Gopal Sharma and others** reported in (2002) 2 SCC 244, had clearly pointed out that once the approval petition is dismissed, the order of dismissal becomes *non est* and the employee is deemed to have been in service throughout. In concluding so, the Hon'ble Supreme Court observed as follows:

"The proviso expressly and specifically states that no workman shall be discharged or dismissed unless he has been



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paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. It is clear from the proviso to Section 33(2)(b) that the employer may pass an order of dismissal or discharge and at the same time make an application for approval of the action taken by him. In the Strawboard Mfg Co. vs. V.Govind reported in AIR 1962 SC 1500, dealing with the contention that if the employer dismisses or discharges a workman and then applies for approval of the action taken and the Tribunal refuses to approve the action, the workman would be left with no remedy as there is no provision for reinstatement in Section 33(2), it is held that "if the tribunal does not approve of the action taken by the employer, the result: (AIR pp. 1504-05, para 8)

"If the Tribunal does not approve of the action taken by the employer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer"."

8. If that be the conclusion of the Hon'ble Supreme Court, then, we do not see any reason as to why the prayer of the appellant / petitioner should not be granted. The Writ Appeal is, therefore, allowed and the order dated 12.04.2022 made in W.P(MD)No.5190 of 2021 is set aside. The writ petition is allowed. Since now the appellant / petitioner has retired from service, he will be entitled to all arrears of salary and all the monetary benefits including pension. The respondent Corporation will calculate the monetary benefits and



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pay the same to the petitioner within a period of twelve weeks from the date of

receipt of a copy of this judgment. No costs.

(R.S.M, J.) (L.V.G, J.)
22.08.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

The General Manager,
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(Kumbakonam) Limited,
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