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W.P.No.18000 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2025

**CORAM
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN**

**W.P.No.18000 of 2025
and
W.M.P.No.20192 of 2025**

A.Sivakumar

... Petitioner

Vs.

1. The Additional Chief Secretary,
Transport Department,
Fort St.George,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Salem.
3. The General Manager,
Tamil Nadu State Transport Corporation (Salem) Limited,
Dharmapuri Region,
Bharathipuram,
Dharmapuri.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, seeking for an issuance of writ of certiorarified Mandamus, to call for the records of the third respondent made in No.Pa2/550/TNSTC/D.Puri/2016 dated 20.07.2016, No.Pa2/575/TNSTC/D.Puri/2017 dated 23.02.2017 & No.Pa1/1073/TNSTC/D.Puri/2018 dated 29.09.2018 and quash the same and consequently direct the respondents to count the period of the petitioner's



W.P.No.18000 of 2016

service rendered between 30.07.1998 till the date of the reinstatement i.e. 14.07.2016 for all purposes and to direct the respondents to grant promotional benefits along with attendant benefits and also to pay the backwages, if any.

For Petitioner : Mr.K.Balakrishnan
For Respondents : Mr.G.Nanmaran
Special Government Pleader for R1
: Mr.K.Raja
Standing Counsel for R2 & R3 (TNSTC)

ORDER

The writ petition has been filed challenging the proceedings of the third respondent dated 20.07.2016, 23.02.2017 and 29.09.2018 and direct the respondents to count the period of the petitioner's service rendered between 30.07.1998 till the date of the reinstatement i.e. 14.07.2016 for all purposes and to grant promotional benefits along with attendant benefits and also backwages, if any.

2. Learned Counsel for the petitioner would submit that the petitioner was terminated from service on 21.10.2005. Pursuant to the order of termination, the respondent management filed an application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 in A.P.No 259 of 2010, seeking approval of the termination. However, the approval petition



W.P.No.18000 of 2014

was dismissed by the Approval Authority *vide* order dated 23.06.2010.

Aggrieved by the said order, the respondent Management preferred a writ petition in W.P.No.32613 & 10689 of 2014, wherein, this Court *vide* order dated 01.03.2016, confirmed the order of the Approving Authority. However, without complying the orders of this Court, the respondent management passed the impugned order on 20.07.2016, appointing the petitioner as new entrant and regularisation was ordered on 23.02.2017. It is the further submission of the learned Counsel that, in view of the Judgement made in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd***, the petitioner must deemed to have been in continuous service, notwithstanding the termination. Hence prayed to interfere with the impugned order.

3. The learned Special Government Pleader and the learned Standing Counsel would strenuously oppose the contention of the petitioner and would submit that the impugned orders were passed on 20.07.2016 and 23.02.2017, and the petitioner has not challenged those orders for almost eight and half years and therefore, latches set-in against the petitioner. In this connection, he would rely upon the orders of the learned single Judge passed in W.P.No.7342 of 2011 dated 05.02.2024.



W.P.No.18000 of 2010

4. Heard the learned Counsel on either side and perused the materials available on record.

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5. While looking at the facts of the case, the petitioner was terminated from service on 21.10.2005. Admittedly, the petitioner did not challenge the said termination order. However, it is the duty of the respondent management to seek approval under Section 33(2)(b) of the Industrial Disputes Act, 1947, whenever any industrial dispute is pending against the employee not connecting with the termination. Hence the respondent management preferred Approval Petition in A.P.No.259 of 2010. However, the said Approval Petition was ultimately dismissed on 23.06.2010. Whenever any approval petition is dismissed, by virtue of the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Ors.***, reported in ***AIR 2002 SC 643***, the workmen will be deemed to have been in continuous service of the employer. For ready reference, it is appropriate to extract paragraph no.14 and the same reads as follows:



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"14. 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 the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge



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or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment in spite of statutory protection given to him by the proviso to Section 33(2)(b). It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33(2)(b), Section 33A would be meaningless and futile. The said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted."

6. When the respondent management preferred a writ petition against a Approval Petition, this Court in W.P.No.32613 & 10689 of 2014 vide order dated 01.03.2016, while confirming the dismissal of approval, directed the respondent management to re-instate the petitioner with all benefits. However, in contrary to the said order, instead of reinstating the petitioner with all benefits, they have issued impugned order, as if the petitioner is a fresh entrant and his service was regularised from the date of fresh appointment i.e., from 17.12.2016.

7. As rightly contented by the learned Counsel for the petitioner,



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the order of the respondent is in contravention to the Constitution Bench

Judgment. In view of dismissal of approval petition, the petitioner must have

been treated as if he has been continuously discharging service

notwithstanding the order of termination. In such view of the matter, this

Court find force in the submission of the learned Counsel for the petitioner.

In view of the same, the impugned orders are quashed.

In the result, the Writ Petition is allowed. No costs. Consequently,
connected miscellaneous petition is closed.

25.06.2025

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Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

To

1. The Additional Chief Secretary,
Transport Department,
Fort St.George,
Chennai - 600 009.
2. The Managing Director,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Salem.



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C.KUMARAPPAN, J.

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3. The General Manager,
Tamil Nadu State Transport Corporation (Salem) Limited,
Dharmapuri Region,
Bharathipuram,
Dharmapuri.

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