# Management of Metropolitan Transport Corporation Ltd. Vs Thiru D. Chinnathu Gownder and Another

**Court:** Madras High Court

**Date of Decision:** July 6, 2012

**Citation:** (2013) LLR 154

**Hon'ble Judges:** S. Sudhakar, J

**Bench:** Single Bench

**Advocate:** M. Chidambaram, for the Appellant; V. Balamurugan, for the Respondent

**Final Decision:** Dismissed

## Judgement

@JUDGMENTTAG-ORDER

S. Sudhakar, J.
This writ petition has been filed to call for the records pertaining to the award dated 29.3.2010 made in CP No. 641 of

2001 on the file of the 2nd respondent herein and quash the same. On 10.12.1994, the 1st respondent/conductor was removed from service on

the ground of irregularity in the sale of tickets. The petitioner/Metropolitan Transport Corporation approached the Labour Commissioner for

approval of the order of removal. Approval Petition in A.P. No. 50/95 came to be dismissed on 10.12.1998. Thereafter, the 1st respondent

employee joined duty on 1.10.1999. Seeking benefits for the period of non-employment, i.e., for the period from 2.6.1994 to 1.10.1999 due to

the order of removal, he filed a Claim Petition No. 641 of 2001. The C.P. No. 641 of 2001 came to be disposed of on 29.3.2010. A sum of Rs.

3,50,699- was claimed. The Labour Court, however, ordered that, a sum of Rs. 3,39,880 should be given and disallowed Rs. 10,820. It relied

upon the decision of the Apex Court reported in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others,

2. Challenging the order of the Labour Court, the present writ petition has been filed by the Transport Corporation contending that during the

period from 2.6.1994 to 30.9.1999, the petitioner was gainfully working as an agriculturist in his own lands. Therefore, it cannot be said that he

was out of employment and consequently, the order is bad. The grant of benefits like washing allowance, uniform cloth, stitching charges, cost of

shoes, collection batta, earned leave, etc., is also disputed by the petitioner as not payable consequent to non-employment on the plea of no work

no pay.

3. In the decision of the Supreme Court cited above, at para 14, it is clearly held that if full approval is not given by the competent authority, the

order of discharge or dismissal is deemed to be not passed, and as the consequence, the employee will have all service benefits.

14. Where an application is made u/s 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 the 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 the 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 u/s 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 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 u/s 33A and that the order of dismissal or discharge becomes invalid or void only when it is set

aside u/s 33A and that till such time he should suffer misery of unemployment in spite of the 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.

In view of the decision of the Honourable Supreme Court held as above and on going through the order of the Labour Court which has considered

ail aspects of the claim and granted the proper amounts after disallowing a sum of Rs. 10,820, this Court is unable to find any irregularity and

impropriety in the order. Further more, the learned counsel for the petitioner is not able to state under what provision of, law the benefits that have

been granted is not correct. In the absence of a specific statutory provision, to the contrary, the order of the labour Court is justified and does not

call for interference. In such view of the matter, the writ petition is dismissed. No costs.