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Madras High Court

Case No: W.A. No. 1524 of 2010 and M.P. No. 1 of 2010

State Express Transport Corp. Ltd. and Another		APPELLANT
	Vs	
Arasu Viraivu Pokkuvarathu Oozhiyar Sangam		RESPONDENT

Date of Decision: Aug. 13, 2010

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33(1), 33(2), 9A

Citation: (2011) 1 LLJ 68 : (2011) LLR 278

Hon'ble Judges: M.Y. Eqbal, C.J; T.S. Sivagnanam, J

Bench: Division Bench

Advocate: Rita Chandrasekaran, for Jayesh Dolia, for the Appellant; V. Ajay Khose, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T.S. Sivagnanam, J.
The State Express Transport Corporation is the Appellant and the appeal has been filed against the order passed in W.P. No. 9332/2008, dated July 23, 2008.

2. The writ petition was filed by the Respondent herein, which is a Trade Union registered under the Trade Unions Act, 1926, formed by the workmen employed in the Appellant corporation. The prayer in the writ petition was for issuance of writ of certiorarified mandamus to quash the proceedings of the Appellant dated October 27, 2007 in so far as the decision to treat the period of absence without any intimation or prior sanction of leave and to treat the period of the alleged absence as leave and consequently direct the Appellants to pay salary to the 54 data entry operators for a period during which they were kept out of employment, together with interest, as per the order dated April 3, 2006 in W.A. No. 379/2006.

3. The members of the Respondent Union were working as conductors/technical staff and possessed knowledge in typing. The Appellant corporation introduced computers for reservation and for office administration and called for applications from conductors and, technical staff, who have completed SSLC with typing knowledge for appointment and posting as computer operators.

4. The members of the Respondent Union with prescribed qualification submitted their application and the Appellant corporation held written examination and appointed such of those who are qualified in such examination as data entry operators during the years 1987-1989. On being posted as data entry operators, the Appellant corporation stopped the payment of washing allowance, stitching charges, uniforms to the conductors and technical staff, who were posted as data entry operators. However, they were given a special allowance. Such data entry operators have been functioning for over 16 to 18 years and at that juncture, the Appellant corporation issued a notice dated July 5,2005 u/s 9(A) of the Industrial Disputes Act (hereinafter referred to "as the Act") proposing to revert the 54 data entry operators.

5. This move was resisted by the Respondent Union and a strike notice was issued. When the conciliation proceedings were pending before the Labour Officer, the Appellant Corporation issued a proceedings dated October 5,2005 attempting to change the service condition of the data entry operators as per the notice dated July 5,2005. Therefore, the Respondent Union filed W.P. No. 32986/2005 to declare the order dated October 5, 2005, reverting the data entry operators to the post of conductors and technical staff as null and void and to continue them in the said post, until the dispute was adjudicated by a competent Labour Court/Tribunal as it was contrary to and violative of Section 33(1)(a) of the Act. The writ petition was dismissed by this Court by order dated March 16, 2006 and the Respondent Union filed W.A. No. 379/2006. The Division Bench by order dated April 3, 2006, declared the order dated October 5, 2005 issued by the Appellant corporation as null and void and issued direction to the Government to refer the dispute raised by the Union to the Labour Court/Tribunal for adjudication. Further, the Division Bench directed the Appellant Corporation not to discontinue the services of the data entry operators till the dispute was adjudicated by the Labour Court without taking prior approval from the Labour Court/Tribunal.

6. The Appellant Corporation filed SLP before the Hon''ble Supreme Court and obtained interim order of status-quo with regard to 21 workmen, who were already reverted during the pendency of the writ petition and in respect of the other 33 workmen, they were allowed to join duty as data entry operators on May 19, 2006. The Government thereafter referred the matter for adjudication to the Principal Labour Court, Chennai and it was taken on file as I.D. No. 236/2006. The SLP filed by the Appellant corporation was dismissed by the Hon''ble Supreme Court on July 27, 2007 and the 21 workmen, who were reverted where restored to the post of data

entry operators. However, since the Appellant corporation did not pay the wages for the said period, inspite of the decision of the Division Bench in W.A. No. 379/2006 having been confirmed by the Hon''ble Supreme Court, a representation was made seeking salary for the said period. The Appellant by order dated October 27, 2007, informed the Respondent Union that the period of absence of duty is treated as leave, even though the employees have absented for duty without any intimation or prior sanction of leave, constituted misconduct as per the model standing orders. Challenging this order dated October 27,2007, the Respondent Union had filed the writ petition in W.P. No. 9332/2008. The writ petition came to be allowed by order dated July 23, 2008 as against which the present writ appeal has been preferred.

7. The learned Counsel appearing for the Appellant would strenuously contend that the Division Bench in W.A. No. 379/2006 dated April 3, 2006 having directed the matter to be referred for adjudication and the Government having referred the matter for adjudication, the Appellant corporation cannot be compelled to pay the wages for the said period and therefore, the learned Judge was wrong in allowing the writ petition.

8. Per contra, the learned Counsel appearing for the Respondent Union would submit that the Division Bench has declared the order of reversion dated October 5,2005 as null and void and non-est. The learned Counsel further contended that in a case where approval of either discharge/dismissal is sought for by a management before the Labour Court and if the approval is not granted by the Labour Court, it shall be deemed that the order of discharge or dismissal has never been passed and the employees are deemed to have continued in service entitling them to all the benefits available and in the instant case, the Division Bench held that the order of reversion dated October 5,2005 is null and void and non-est law and the consequences is that such order was not existing in the eye of law thereby the employees shall be entitled to all benefits as if they deemed to have continued in service. In support of his contention, the learned Counsel relied on the decisions of the Hon''ble Supreme Court in M.D., Tamil Nadu State Transport Corporation Vs. Neethivilangan Kumbakonam, and Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, .

9. We have considered the submissions made on either side and perused the materials available on record.

10. The only issue, which is required to be considered in this appeal is as to whether the employees of the Appellant Corporation/ members of the Respondent Union are entitled for wages for the period during which they were kept out of employment. It is not in dispute that the members of the Respondent Union were absorbed as data entry operators and have been in employment for periods ranging from 16 to 18 years and the Appellant corporation proposed to revert them from service by issuing notice u/s 9A of the Industrial Disputes Act, which led issuance of strike notice by the Respondent Union. While, the issue was pending, the Appellant

corporation attempted to implement the change proposed by them in the notice dated October 5,2005, which came to be challenged before this Court by filing W.P. No. 32986/2005, on the ground that the action is vocative of u/s 33(1)(a) of the I.D. Act. The writ petition was dismissed by order dated March 16, 2006 and the Respondent Union filed W.A. No. 379/2006, the writ appeal was allowed by the Division Bench of this Court by order dated April 3,2006 and it is relevant to quote the operative portion of the order as follows:

14. In the result, the writ appeal is allowed. The order of the learned single Judge is set aside and impugned order No. 13/15039/A1 /SETCTN/2002, dated October 5, 2005 issued by Respondents 1 and 2 reverting the Data Entry Operators to the post of conductor/technical staff is hereby declared null and void and non-est.

11. The contention of the learned Counsel appearing for the Appellant is that the Division Bench while allowing the writ appeal issued a further direction to the Government to consider the failure report furnished by the Conciliation Officer and make proper reference to the Labour Court/Industrial Tribunal for adjudication of the dispute between the parties. Therefore, pending such adjudication, the Appellant corporation should not be compelled to pay the wages. We are unable to agree with the contention raised by the learned Counsel appearing for the Appellant for more than one reason. Firstly, the Division Bench by order dated April 3,2006, allowed the writ appeal and set aside the order dated October 5, 2005, by which the employees were reverted from the post of data entry operators to that of conductor/technical staff. In fact the Division Bench held that the order to be null and void and non-est. Therefore, the corollary is that there is no such order in the eye of law and automatically the members of the Respondent Union would be entitled to all benefits, which would accrue to them. Secondly, the law on the subject is well settled and as pointed out by the learned Counsel for the Respondent their Lordships of the Hon''ble Supreme Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd v. Ram Gopal Sharma and Ors. (supra), while examining this scope of Section 33(2)(b) of the Act held as follows Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others,

14..... 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. Consequences 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.....

12. Thus, the legal position being if approval is not given by the Labour Court u/s 33(2)(b) for an order of dismissal or discharge effected by a Management on its employee, it would be deemed that the order of discharge or dismissal had never been passed and consequently the employee is deemed to have continued in service entitling him to all the benefits available. Thus by applying the law laid down by the Hon''ble Supreme Court, we have not hesitation to hold that the Appellant corporation are not justified in denying the wages to the members of the Respondent Union from the date of reversion till the date on which, they were restored to their original position. Hence, for all the above reasons, we are in full agreement with the reasons assigned by the learned Judge while allowing the writ petition.

13. In the result, the writ appeal fails and it is dismissed and the Appellant corporation is directed to comply with the direction issued by the learned Judge in W.P. No. 9332/2008 within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.