

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12176 of 2016
and
WMP.Nos.10513 and 10514 of 2016

A.Jenitha Mary .. Petitioner

Versus

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.The Management,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Region,
Villupuram. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus, calling for the records connected with the award dated 14.12.2010 made in I.D.No.52/2005 passed by the first respondent and quash the same in so far as it relates to the denial of back wages and other attendant benefits and also direct the Respondent to pay back wages and attendant benefits.

For Petitioner : Mr.M.Gnanasekar

For Respondents : Mr.P.Paramasivados (for R2)

O R D E R

Heard Mr.M.Gnanasekar, learned counsel appearing for the petitioner and Mr.P.Paramasivados, learned standing counsel appearing for the second respondent / Transport Corporation, accepting notice on behalf of second respondent. With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2. The petitioner has filed this writ petition to quash the award passed by the Labour Court, Cuddalore in I.D.No.52 of 2005 dated 14.12.2010, in so far as it denies back wages and other attendant benefits and also to direct the respondent, Management to pay back wages and other attendant

benefits as this Court deems fit.

3. The petitioner's father was working as a driver in the respondent Corporation and while in duty he met with an accident, as a result of which he suffered serious injuries and was medically discharged from service on 17.04.1998. The respondent Corporation offered appointment to the petitioner on compassionate grounds in terms of the direction issued by the Government under G.O.Ms.No.32 Transport Department dated 08.01.1986. The petitioner was appointed as a Junior Clerk (Daily Wage Trainee) on 08.06.1998 and was working for about four years and thereafter, she was denied employment. Challenging her non-employment, the petitioner raised dispute before the Labour Court, Cuddalore, which was taken on file in I.D.No.52 of 2005.

4. The respondent Corporation resisted the claim petition stating that the petitioner got married on 25.01.2002 and she is not entitled to get employment in the respondent Corporation. Further, it was stated that the petitioner had not continuously worked for 240 days in a year and she cannot be absorbed in the Corporation as there was a ban on recruitment during the relevant period. Before the Labour Court, the petitioner examined herself as W.W.1 and marked six documents as Exs.W1 to W6. On the side of the respondent Corporation, there was no oral evidence, but they marked five documents as Ex.M1 to M5. The Labour Court framed the point for consideration as to whether the petitioner is entitled for reinstatement with continuity of service, with back wages and other attendant benefits.

5. After considering the oral and documentary placed evidence before the Court, the Labour Court passed an award on 14.12.2010 setting aside the dismissal of the petitioner, who was held to be in continuity of service in the respondent / Corporation and directed her reinstatement with continuity of service. However, the Labour Court declined to grant back wages and other attendant benefits. Thus, the claim petition was allowed in part to the extent indicated above. It is not in dispute, that the respondent Corporation did not challenge the award passed by the Labour Court. At the first instance, the petitioner also did not challenge the award and appears to have been satisfied with the relief granted. Enclosing a copy of the award, the petitioner submitted a representation to the respondent Corporation on 11.04.2011, conveying her readiness to join duty. The Corporation having not challenged the award ought to have reinstated her with continuity of service. But curiously enough the respondent Corporation sent a communication dated 09.04.2012 calling upon the petitioner to attend the interview for the post of Junior Clerk (Trainee) for a period of three years and the petitioner was directed to produce her credentials. The petitioner submitted a

representation stating that she cannot be called for attending the interview since she has an award in her favour passed by the Labour Court. Thereafter, an order was passed by the the respondent Corporation dated 07.08.2012, appointing the petitioner as Junior Clerk in a time scale of pay and she was placed under probation for a period of one year. Thus, the appointment offered to the petitioner vide proceedings dated 07.08.2012, is a fresh appointment. The respondent Corporation having not challenged the award passed by the Labour Court cannot appoint the petitioner as a fresh entrant, but she has to be reinstated with continuity of service. Therefore, the order of appointment dated 07.08.2012, as a fresh entrant is inconsistent with the award passed by the Labour Court. Therefore, to that extent, the order dated 07.08.2012, has to be held to be illegal. So far as the relief sought for by the petitioner relating to back wages and other attendant benefits, after considering the facts of the case and the reasons assigned by the Labour Court, it has to be held that the approach of the Labour Court in denying back wages and other attendant benefits is justifiable. Admittedly, during the relevant period the petitioner was not in employment and therefore by applying the principles of no work no pay, the findings of the Labour Court on this aspect can be sustained.

6. Accordingly, the writ petition is partly allowed and the second respondent Management is directed to modify the appointment order dated 07.08.2012, by reinstating the petitioner from the date on which she was discharged with continuity of service which would mean that the total length of service would be taken into consideration from the date on which the petitioner was initially appointed by the respondent Corporation for all purposes except wages for the said period, since the Labour Court has not granted any relief in that regard and such finding having been confirmed by this Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

vs/kpr

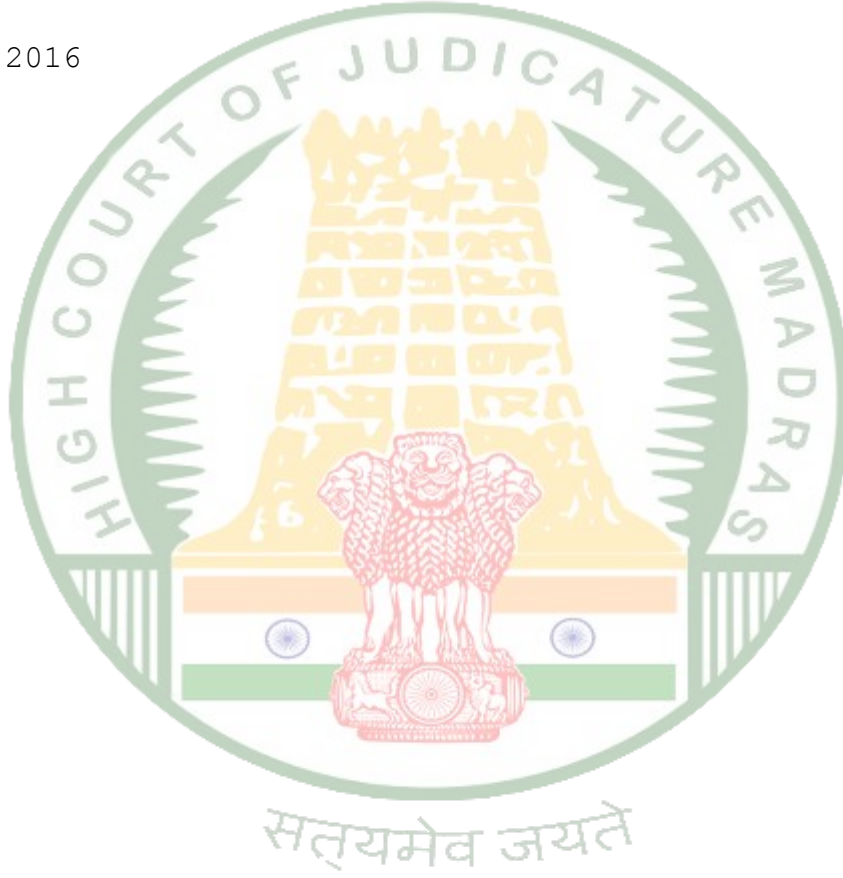
To

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