

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.15557 of 2015
and
M.P.Nos.1 and 2 of 2015

The Management,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam,
Anna Salai,
Chennai - 600 002. ... Petitioner

...Vs...

1.Thiru.A.Mani
2.The Presiding Officer,
IIIrd Additional Labour Court,
City Civil Court Annexure Buildings,
High Court Compound,
Chennai - 600 104. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed in CP.No.224 of 2005 dated 24.11.2014 on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For R1 :Mr.R.Krishnaswamy

ORDER

Heard Mr.M.Chidambaram, learned counsel appearing for the petitioner and R.Krishnaswamy, learned counsel appearing for the first respondent and with their consent, this Writ Petition is taken up for final hearing.

2. The petitioner has challenged the order passed by the III Additional Labour Court, Chennai in C.P.No.224 of 2005 dated 24.11.2014. The petitioner had filed the claim petition under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'), wherein the petitioner sought for computation of monetary benefits under three heads viz., i) back wages being Rs.7,94,987.65/-, ii) bonus Rs.87,229.90/- and leave salary of Rs.31,429.46/- and in all Rs.9,14,647.01/-

3. The Management resisted the Claim Petition by filing the counter affidavit, opposing all the three claims and furnished a calculation sheet before the Labour Court stating that the amount payable to the petitioner is only a sum of Rs.3,02,297.00/-. The workman examined himself as PW1 and marked 20 documents as Exhibits P1 to P20 and the Management examined one Mr.A.G.Sugumar, as RW1 and marked the backwages working sheet as Ex.R1, dated 01.10.2013. The Labour Court, after considering the oral and documentary evidence, directed the petitioner/Management to pay a total amount of Rs.9,14,647.01/-, being the amount payable under all the three heads claimed by the workman, within a period of 60 days from the date of the order passed by the Labour Court and on failure, ordered interest @ 9% per annum from the date of the order till realization. The Labour Court further permitted the Management to adjust the amount already paid to the workman and also directed the Management to pay a cost of Rs.3000/- to the respondent/workman.

4. The undisputed facts are that, the Award directing reinstatement with backwages and other benefits passed in I.D.No.2 of 1996 was challenged by the Management before this Court in W.P.No.5960 of 2004, and this Court by an order, dated 28.07.2011 dismissed the said Writ Petition. As against the said order passed by this Court, the Management did not prefer any appeal. Thus the Award, directing reinstatement with backwages, continuity of service and all attendant benefits stood confirmed.

5. From a bare perusal of Impugned Order, it is clear that the Labour Court has carefully considered as to what would be the exact back wages payable taking into consideration the periodic revision of wages, pursuant to the calculation sheet and recorded the finding as regards the actual wages which the workman is entitled to. The reasons assigned by the Labour Court are cogent and proper and calls for no interference. With regard to the claim for bonus, though the Management raised the objection in their counter statement before the Labour Court, threadbare analysed the entitlement of the workman in comparison with similarly placed workman and computed the bonus payable. The reasoning for such an order also being a proper

reasoning, this Court does not propose to interfere with the said findings. This leaves us with the only issue with regard to leave salary. In the counter statement filed by the petitioner/Management, it has been specifically contended that the claim for leave salary is not maintainable due to the reason that the workman has not actually performed duty as Binder or any other job during his non-employment period and the eligibility of earned leave is only when an employee who is permanent in nature actually worked in the Corporation without any loss of pay and for every 18 days of actual performance of duty, proportionate earned leave will be credited to the employee's leave account. Further, it was contended that the back wages are claimed for the entire 365 days in a calendar year, it will be taken for calculation of backwages and therefore the workman is not entitled for earned leave, which he has claimed at Rs.31,429.46/-. On a perusal of the impugned order, it is seen that, the Labour Court did not go into this aspect as to whether the workman is entitled for earned leave, inspite of a specific objection having been raised by the Management. Thus, the Labour Court proceeded to compute the earned leave benefit even without recording a finding as regards the workman's entitlement in that regard.

6. This renders the impugned order perverse to the extent relating to the order granting benefit of earned leave. Therefore, this Court, is inclined to interfere with the impugned order to that extent and to remand the matter to the Labour Court for fresh consideration on this aspect alone.

7. Faced with this situation, the learned counsel appearing for the petitioner/ workman on instructions, submitted that the workman is ready and willing to forgo his claim made under the head of earned leave as claimed by him in the claim petition. This submission is placed on record and the claim petition made by the workman for earned leave stands rejected.

8. Having held that the order passed by the Labour Court computing back wages and bonus is proper, the Management is bound to pay the same. The learned counsel appearing for the Management raised the contention that whatever amount has been paid to the workman has been permitted to be adjusted. In this regard, the calculation sheet which was marked as Ex.R1 was referred to show that the amount paid to the workman is Rs.3,02,297/-. As rightly pointed out by the learned counsel for the respondent, the Management need not have any apprehension in this regard, since the Labour Court has granted permission to the Management to adjust the said amount as against the amount ordered to be paid in the impugned proceedings. Thus the only issue now remains to be considered

is with regard to the interest which has been directed to be paid.

9. Considering the fact that the Writ Petition is pending for almost one year and the correctness of the order was tested by this Court and order has been passed only today, the petitioner-Management should be granted time to comply with the order and if they do not comply with the order within a reasonable time, then the amount should be paid together with interest.

10 . In the light of the above, the Writ Petition is partly allowed on the following terms:-

(i) The order granting back wages and bonus as awarded by the Labour Court is confirmed.

(ii) The order granting earned leave benefit to the workman stands set aside.

(iii) The Management is entitled to adjust the sum of Rs.3,02,296.55/- from and out of the amount payable as back wages and bonus in terms of clause (i) above.

(iv) The payment after adjustment as mentioned in clause (3) above shall be paid within a period of three months from the date of receipt of a copy of this order.

(v) If the amount is not paid within the time stipulated by this Court i.e., within a period of three months from the date of receipt of a copy of this order, then the entire amount shall be paid to the workman together with interest at the rate of 7% p.a from the date of expiry of three months till the date of payment.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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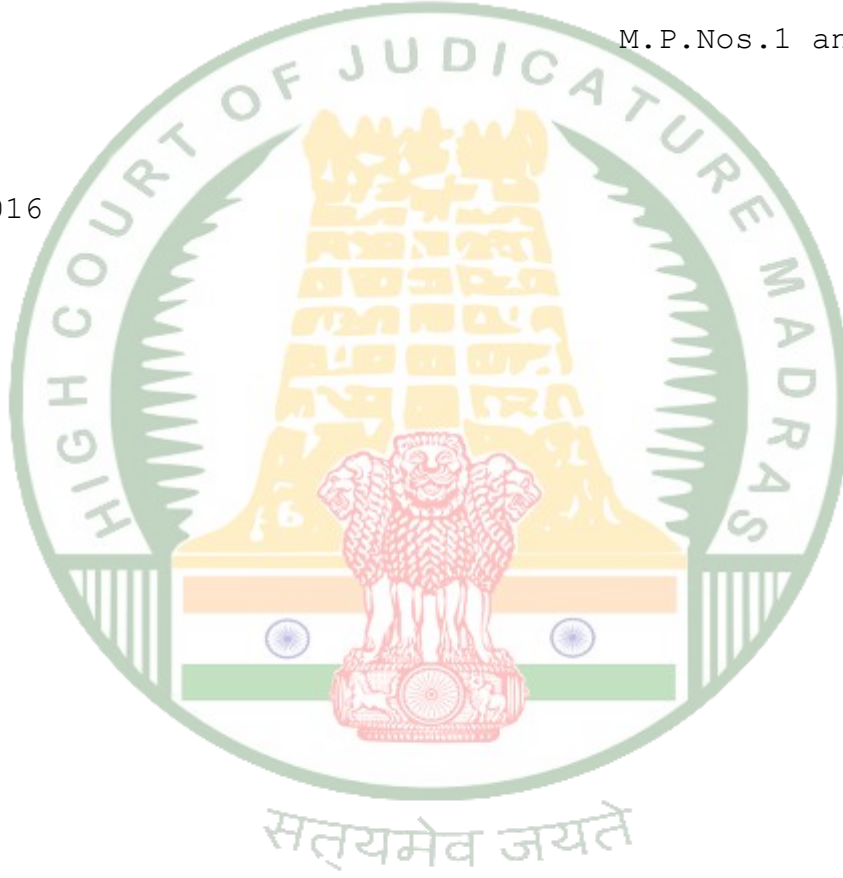
1.The Presiding Officer,
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+1 cc to M/s.V.Ajoy Khose Advocate sr.23447
+1 cc to Mr.M.Chidambaram Advocate sr.23397

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