

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-04-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26251 OF 2012

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

...Petitioner

-vs-

1.Thiru N.Velayutham

2.The Presiding Officer,
III Addl.Labour Court,
City Civil Court Buildings,
Chennai-600 104.

...Respondents

Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the Award, dated 17.04.2012, made in C.P.No.135 of 2009, on the file of the second respondent herein, and quash the same.

For petitioner : Mr.M.Chidambaram

For respondent 1 : Mr.V.Balamurugan

ORDER

Petitioner is the management of Metropolitan Transport Corporation Limited, Chennai.

2. The challenge in this Writ Petition is to the order passed by III Additional Labour Court, Chennai, in C.P.No.135 of 2009, dated 17.04.2012. This case has had a checkered history. Yet, the petitioner Corporation does not propose to grant any proper relief to the first respondent workman, in spite of he having succeeded up to the Hon'ble Supreme Court.

3. The first respondent was a temporary employee with the petitioner Corporation. Since his services were not regularised, he approached the Inspector of Factories, to confer permanent status on him and, on receiving notice from

the said authority, the petitioner removed the first respondent from service, without issuing any notice. Challenging the non-employment, the first respondent raised an industrial dispute before the Labour Court in I.D.No.7 of 1992. During the pendency of the said I.D., the Inspector of Factories, by an order, dated 07.05.1992, conferred permanent status on the first respondent from 01.05.1986, against which the petitioner Corporation filed W.P.No.21852 of 1993, which was dismissed. No appeal was preferred against the said order. Thus, the order passed by the Inspector of Factories, conferring permanent status on the first respondent by order, dated 01.05.1986, had become final. The Labour Court adjudicated the dispute, by allowing it partly, and directing the petitioner Corporation to reinstate the first respondent with continuity of service and 50% backwages. The petitioner Corporation challenged the award in W.P.No.5229 of 1996, which was admitted. During the pendency of the said Writ Petition, the workman filed a petition under Section 17-B of the Industrial Disputes Act, 1947, and, pursuant to a direction issued, the first respondent workman was paid Rs.1,250/- per month, on par with the permanent workmen, with arrears from the date of filing of Writ Petition. Thereafter, W.P.No.5229 of 1996 was dismissed and the appeal filed against the order in the said Writ Petition in W.A.No.1286 of 2003 was also dismissed, and against the said order of dismissal, the Special Leave Petition filed before the Hon'ble Supreme Court in S.L.P.No.23890 of 2003 was also dismissed, as leave was not granted. In the meantime, the first respondent workman filed W.P.No.8393 of 1997, challenging the award passed by the Labour Court, in so far as it denied 50% of backwages. The said Writ Petition was allowed, by an order, dated 23.04.2004, by holding that the workman was entitled for full salary from 07.05.1992, being the date, on which permanent status was conferred on him, making it clear that the salary payable to the first respondent shall be on par with the salary of permanent employees and, in other respects, the order of the Labour Court was confirmed. Therefore, the workman claimed that he should be paid on par with the other workman and the salary and other benefits should be calculated accordingly.

4. Though, at the relevant point of time, the minimum basic salary of the employee of the petitioner Corporation was Rs.740/-, curiously, the petitioner Corporation created a post called "Bus Body Cleaner", fixing the petitioner in the scale of pay of Rs.375-5-495.

5. It is relevant to point out, at this juncture, that there was no such scale of pay in the petitioner Corporation nor under the Service Rules, and, thus, the post appears to have been created, only with a view to accommodate the first respondent. In my view, there is another intention, which is manifest from this action, since the management did not grant the full relief to the workman, under the guise of creating a post, fixing a scale, which is far below the

minimum scale of a technical post. That apart, the Service Rules did not contemplate fixation of such scale of pay, well below the minimum scale of pay. With these facts, the Computation Petition was filed.

6. Before the Labour Court, the workman examined himself as W.W.1 and he marked twelve documents, namely, Ex.W-1 to Ex.W-12. On the side of management, one Elumalai was examined as M.W.1 and one document, namely, Minutes of the Board Meeting, was filed as Ex.M-1.

7. The Labour Court considered the matter at great length and, by elaborate reasoning, rejected the stand taken by the management, stating that the workman cannot be paid below the minimum wages. It is to be mentioned here that in the counter statement filed in C.P.No.135 of 2009, the management did not raise any issue on the merits of the monetary claim made by the workman, but, challenged the claim on the ground the workman was not absorbed as a permanent employee. The Labour Court rightly took into consideration the direction issued by this Court in W.P.No.8393 of 1997, wherein, it was clearly held that the petitioner therein, who is the first respondent herein, was entitled to all benefits and full salary from 07.05.1992 i.e., when the permanent status was conferred on him, and he should be paid on par with the permanent workman. This having not been done, the petitioner filed Computation Petition, for computing difference in wages. The reasoning assigned by the Labour Court is cogent and the Labour Court has rightly allowed the Computation Petition, giving a reprieve to the respondent workman. In the absence of any perversity in the approach of the Labour Court, no interference is called for with the impugned order.

8. Writ Petition, therefore, fails and is dismissed.
No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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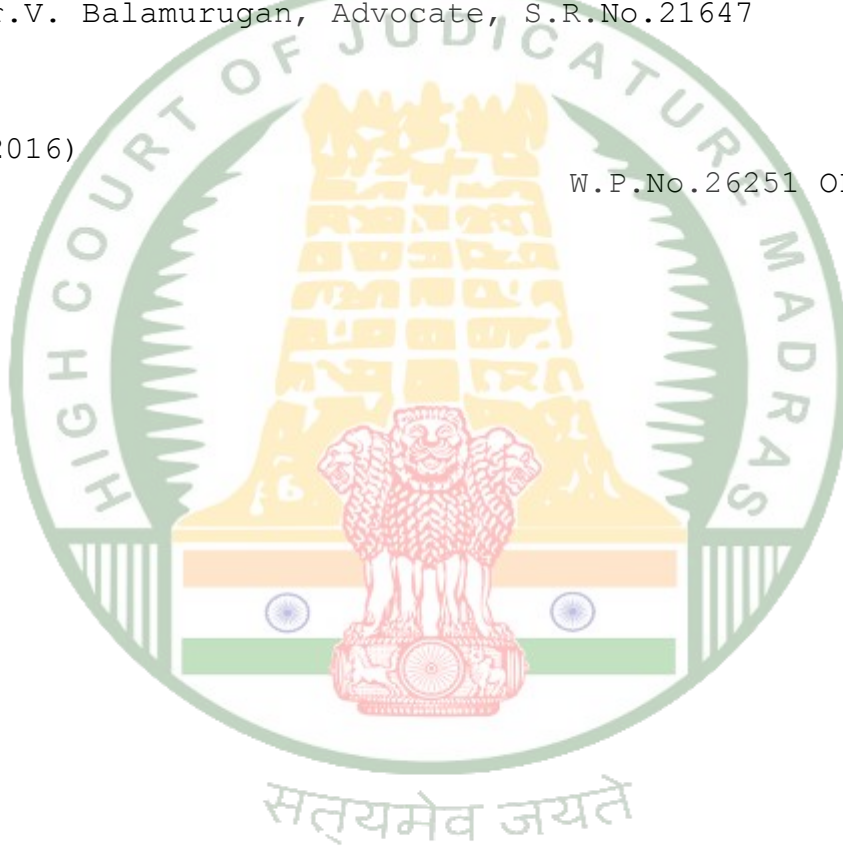
To

The Presiding Officer,
III Addl.Labour Court,
City Civil Court Buildings,
Chennai-600 104.

+lcc to Mr.M. Chidambaram, Advocate, S.R.No.21816
+lcc to Mr.V. Balamurugan, Advocate, S.R.No.21647

KK(CO)
EU(25/04/2016)

W.P.No.26251 OF 2012



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