

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2016

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THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

W.P.No.38910 of 2016

The District Manager [Petitioner]
Tamil Nadu State Marketing Corporation Ltd.
Bavani Main Road Suriampalayam
Vasavi College Post Erode-63.

Vs

1 The Labour Court
Salem.
2 P.Shanmugam
3 Vijayalakshmi [Respondents]

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call to the petitioner records of the 1st respondent in C.P.No.163/2013 dated 27.08.2015 quash the same.

For Petitioner : Mr.B.Nedunchezhiyan

O R D E R

Tamil Nadu State Marketing Corporation Ltd., has come before this Court challenging the order of the labour Court dated 27.08.2015, in and by which, the labour Court directed payment of salary for the period 01.05.2005 to 31.07.2007, return of advance amount, incentive amount and other benefits to the legal heirs of one Balamurugan, S/o respondents 2 and 3.

2. The said Balamurugan, who is the son of respondents 2 and 3, worked as a Supervisor in Shop No.3580 at Erode District from 21.11.2003. On 18.05.2005, he was dismissed from service due to misconduct. The said order was challenged before this Court in W.P.No.43615 of 2006 and this Court, by order dated 13.04.2007, set aside the dismissal order. Pursuant to the said order, Balamurugan was reinstated into service on 28.07.2007. However, on 06.08.2007, the said Balamurugan died.

3. Claiming a sum of Rs.1,61,000/- towards salary for the period from 01.05.2005 to 31.07.2007, bonus, incentives, security deposit amount along with interest at 18% p.a., the 2nd and 3rd respondents being the legal heirs of deceased Balamurugan, filed a claim petition in C.P.No.163 of 2013 before

the labour Court. The labour Court, passed an order in their favour on 27.08.2015, however, with interest at 6% p.a., failing which 9% interest to be paid. The said order is being challenged by the Transport Corporation in this writ petition.

4. Heard Mr.B.Nedunchezhiyan, learned counsel for the petitioner Corporation.

5. The learned counsel for the petitioner Corporation would submit that the said Balamurugan was dismissed from service and he has not worked. Moreover, he is not entitled for any incentive amount as ordered by the labour Court. Further, the security deposit is being collected in order to compensate the damages caused, if any, by the employee while he is in service. The said Balamurugan while in service, has not given any account for the empty bottles to the tune of rs.35,933/- and therefore, the said amount has to be deducted from the security deposit of Rs.50,000/-. However, without looking into all these aspects, the labour Court has ordered the claim petition. Therefore, the learned counsel has prayed for allowing of the writ petition.

6. This Court has considered the submissions made by the learned counsel for the Transport Corporation.

7. There is no dispute with regard to the employment of Balamurugan and his dismissal from service on 18.05.2005. The dismissal order was challenged before this Court in W.P.No.43615 of 2006 and this Court on 13.04.2007 set aside the dismissal order, for violation of principles of natural justice and given liberty to proceed afresh. Subsequent to the setting aside of the dismissal order by this Court, the said Balamurugan is said to have been reinstated, however, no proceedings have been initiated against him afresh, as ordered by this Court. Till the dismissal order was set aside by this Court, the said Balamurugan was not employed elsewhere and therefore, a claim was made for payment of salary for the said period. Meanwhile, the said Balamurugan also died on 06.08.2007. In the absence of any fresh proceedings initiated against the said Balamurugan, especially when the order of dismissal has been set aside by this Court, the said Balamurugan is deemed to have been in service and he is entitled for salary for the aforesaid period. When the dismissal order was set aside and when no proceedings have been initiated against the said Balamurugan after his reinstatement, the petitioner Corporation is liable to pay the salary amount for the period from 01.05.2005 to 31.05.2007, to the said Balamurugan or his legal heirs. Therefore, the labour Court has rightly ordered payment of arrears of salary to the tune of Rs.81,000/- at the rate of Rs.3,000/- per month for 27 months.

8. As far as Rs.30,000/- towards incentive is concerned, if the said Balamurugan had been in service, he would have earned the said amount towards incentive. Therefore, the legal representatives are entitled for a sum of Rs.30,000/- towards incentive. As regards a sum of Rs.50,000/- towards security deposit is concerned, the labour Court has rightly disbelieved the version of the petitioner that there was shortage of empty bottles to the tune of Rs.35,933/-. Further, the labour Court has noted that neither there was any show cause notice issued nor any proceedings regarding shortage of empty bottles was issued and therefore, coming to the conclusion that question of denying Rs.35,933/- from the caution deposit of Rs.50,000/- does not arise, the labour Court has rightly ordered the entire amount to be paid to the 2nd and 3rd respondents towards security deposit.

9. Therefore, viewed from any angle, the order of the labour Court directing the petitioner to pay a sum of Rs.81,000/- towards salary, Rs.50,000/- towards caution deposit and Rs.30,000/- towards incentive, in all amounting to Rs.1,61,000/- along with interest at 6% p.a. is sustainable.

10. The award was passed as early as on 27.08.2015. Now, more than one year has lapsed. The 2nd and 3rd respondents are parents of the deceased employee Balamurugan. When such is the position, the petitioner Corporation, ought to have very magnanimously paid the amount promptly to the 2nd and 3rd respondents. Without doing so, the petitioner has come before this Court, challenging the order of the labour Court, that too belatedly.

11. In these circumstances, while dismissing the writ petition, confirming the order of the labour Court, this Court directs the petitioner to pay the amount of Rs.1,61,000/- together with interest at the rate of 6% p.a. to the 2nd and 3rd respondents, being the legal heirs of the deceased Balamurugan, on or before 07.12.2016. It is made clear that if the amount has not been paid within the time stipulated to the 2nd and 3rd respondents, the petitioner shall appear before this Court on the next date of hearing viz., 09.12.2016. No costs.

Call the matter for reporting compliance on 09.12.2016.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

The Labour Court,
Salem

Copy to

The Section Officer
Writ Section,
High Court, Madras (Post on 9.12.2016)

1 cc to Mr.B. Nedunchezhiyan, Advocate, Sr. 63768

W.P.No.38910 of 2016

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