

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017
CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1196 of 2017

G.Kalpana

.. Appellant/Writ Petitioner

Versus

1 The Managing Director
Metropolitan Transport Corporation
Anna Salai Pallavan Illam Chennai-600 002

2 The Administrator
Tamil Nadu State Transport Corporation
Employees Pension Fund
Pallavan Salai
Chennai-600 002

.... Respondents/Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 8.6.2017 passed in W.P.No.14287 of 2017 Writ Petition presented under Article 226 of the Constitution of India, to this court to direct the 1st respondent to pay backwages for the remaining period from June 2013 to the date of death of the husband of the petitioner i.e on 21.03.2015 and Family pension and other terminal benefits to the petitioner on the file of this court.

For appellant सत्यमेव जयते : Mr.S.T.Varadarajulu

For respondents : Mr.P.Paramasivadoss

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JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. The writ appeal has been filed challenging the order passed by the learned Single Judge declining to entertain the claim of backwages for the period from June 2013 to the date of death of the husband of the appellant/petitioner viz., on

21.3.2015 and family pension and other terminal benefits to the appellant/petitioner.

3. It appears that the writ petition has been dismissed by the learned Single Judge on the ground that the husband of the writ petitioner has not approached the authority within a reasonable time.

4. It is not in dispute that the husband of the appellant/writ petitioner filed the computation petition under Section on 31.5.2013 though he was dismissed from service on 28.4.2008. Pending such petition, he died on 21.3.2015.

5. Section 33C(2) of the Industrial Disputes Act, reads thus:-

" [33C. Recovery of money due from an employer.- (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB, the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may

be specified in this behalf by the appropriate Government; within a period not exceeding three months."

6. It appears that the petition filed before the before the Labour Court also claiming backwages for the non-employment during the period between May 2008 and May 2013 is said to have not been disposed of till date. However, in the case of of JAIPUR ZILA SAHAKARI BHOOMI VIKAS BANK LTD. v. R.G.SHARMA (2002 (1) LLN 639), it has been held that failure to make application under Section 33(2)(b) seeking approval, renders order of dismissal inoperative and the dismissal becomes ineffective from the date it was passed and the employee becomes entitled to wages from the date of dismissal.

7. In the light of the ratio laid down in the decision cited supra, the claimant is entitled to family pension, but, considering the length of period of absence and in the facts and circumstances of the case, the appellant/writ petitioner would be entitled to get family pension only from the date of this judgment, with other entitlements, however, without backwages as claimed by her. It is also made clear that the period from 2008 to 2015 would not be reckoned for the purpose of family pension. Further, contribution if any, towards family pension due to be paid would be deducted from the terminal benefits. The writ appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssk.

To:

- 1 The Managing Director
Metropolitan Transport Corporation
Anna Salai Pallavan Illam Chennai-600 002
- 2 The Administrator
Tamil Nadu State Transport Corporation
Employees Pension Fund Pallavan Salai
Chennai-600 002

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.83973

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