

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.41968 of 2016 &
W.M.P.Nos.35924 of 2016 & 15601 of 2017

The Management
Tamilnadu State Transport Corporation
(Villupuram) Ltd.,
Thiruvannamalai Region,
Thiruvannamalai
Rep. By its General Manager ... Petitioner
vs.

1. P.Balaraman
2. The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai - 6. ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the order passed by the 2nd respondent in Approval Petition in A.P.No.44 of 2011 dated 04.04.2016 and quash the same as illegal.

For Petitioner : Mr.P.Paramasivadosh
For Respondents : Mr.K.M.Ramesh for R1
Mr.R.A.S.Senthilvel
Additional Government Pleader for R2

ORDER

By consent the main writ petition itself is taken up for hearing.

2. The petitioner has challenged the rejection of the approval petition in A.P.No.44 of 2011 dated 04.04.2016 under Section 33 (2) (b) of the Industrial Disputes Act, 1947, on the ground that the order of dismissal is willful and there is violation of principles of natural justice.

3. The learned counsel appearing for the petitioner would submit that a domestic enquiry was conducted, in which, due opportunity was given and therefore, the findings of the second respondent, based upon which, a decision has been rendered, cannot be sustained in the eye of law.

4. The learned counsel for the respondent No.1 would submit that the unauthorized absence was due to the failure in considering the alternative employment. The petitioner has not sent the respondent No.1 to the Medical Board. Therefore, the finding rendered on the ground of violation of principles of natural justice is justified. There is no basis for not accepting the request for alternative employment. Hence no interference is required.

5. The learned counsel appearing for the petitioner in reply would submit that considering the facts of the case and in the event of this Court coming to the conclusion that the order passed by the respondent No.2 is correct, no backwages has to be ordered. By reply, the learned counsel for the respondent No.1 would submit that the respondent No.1 has reached the age of superannuation and hence, he is entitled to arrears of backwages from the date of his dismissal from service till the date of his superannuation i.e. from 25.01.2011 to 31.01.2013.

6. While this Court can exercise discretion insofar as the payment of back wages is concerned, the provident fund contribution payable by the petitioner will have to be paid by them though the same can be deducted from the amount due in so far as the contribution payable by the respondent No.1 is concerned. This Court does not find any perversity warranting interference. A factual finding was rendered with respect to the non-consideration of the request of the first respondent in respect of alternative employment. It is not in dispute that though such a request has been made by the respondent No.1, the same has not been sent to the Medical Board. Law also mandates such a procedure to be followed. Accordingly, the writ petition stands dismissed. However, it is clarified that in as much as the respondent No.1 has reached the age of superannuation and there is no dispute on the fact of unauthorised absence, the respondent No.1 is entitled one year salary alone for the period of non employment from 25.01.2011 to 31.01.2013. He is entitled for continuity of service and other incidental benefits. In so far as the payment of provident fund is concerned, the same can be deducted from the amount payable by the petitioner as indicated above. The benefits which the respondent No.1 is entitled to, in pursuant to the superannuation, shall be made by the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are also dismissed.

s/d-
Assistant Registrar (CS-V)

True Copy

To

The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai - 6.

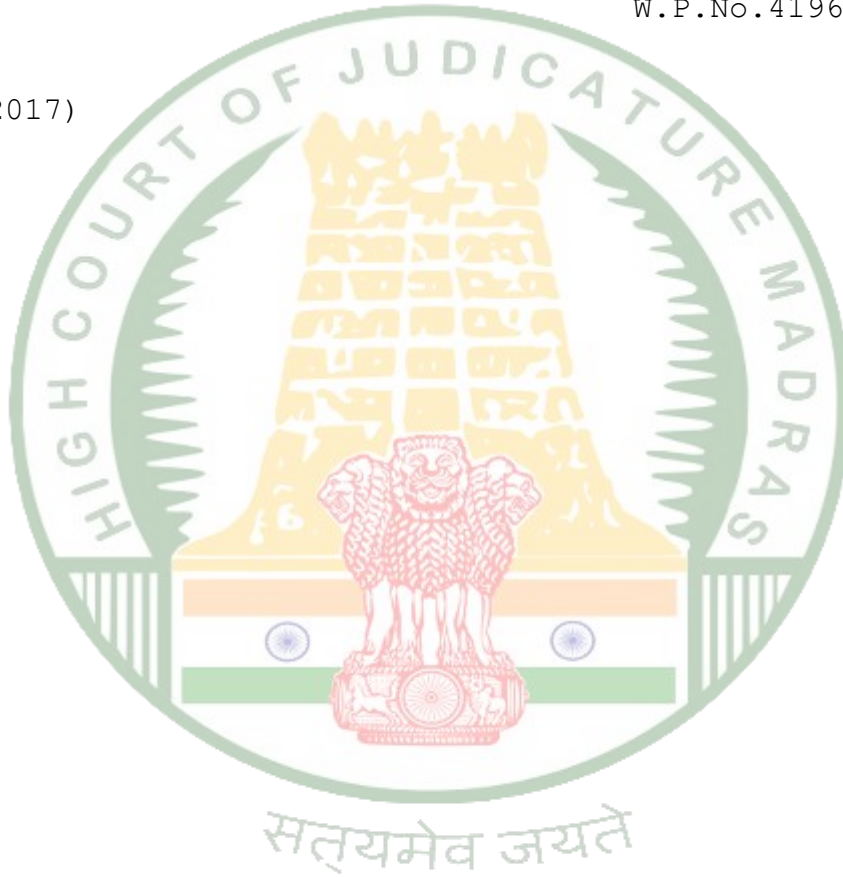
+1 CC to Mr.K.M. Ramesh, Advocate sr 44246

+1 CC to Govt. Pleader sr 44500

+1 CC to Mr.P. Paramasivadosh, Advocate sr 44918

W.P.No.41968 of 2016

RK (CO)
sp (24/07/2017)



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