

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.03.2018**

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**
AND
THE HON'BLE MR.JUSTICE **P.VELMURUGAN**

W.A.Nos.1345 and 1346 of 2017 and
C.M.P.Nos.18599 and 18600 of 2017

The Commissioner,
Thiruvannamalai Municipality,
Thiruvannamalai.

... Appellant in both W.As.

Vs

1. C.Vijayabalan

2. The Presiding Officer,
Principal Labour Court, Vellore.

... Respondents in both W.As.

Prayer:- Writ Appeals filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in WMP.Nos.18799 and 18780 of 2016 in W.P.No.7922 of 2016 dated 24.04.2017.

For Appellant

: Mr.K.Venkatramani,
Senior Counsel for
M/s.S.Eraskine Leo

For 1st Respondent : Mrs.D.Geetha

COMMON JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The Intra Courts appeals are directed against the interim orders in WMP.Nos.18799 and 18780 of 2016 in W.P.No.7922 of 2016 dated 24.04.2017, directing the appellant to deposit 50% of the back wages to the credit of I.D.No.72/2014 on the file of the Principal Labour Court, Vellore and permitting the 1st respondent to withdraw the said amount.

2. We have heard the learned Senior Counsel for the appellant. We have also heard the learned Counsel for the 1st respondent.

3. The 1st respondent was engaged by Thiruvannamalai Municipality and he was assigned the work of cleaning the pay and use toilet at the bus terminus. The order of appointment was given on 25.08.1991. The appellant appears to have regularised the services of three other employees who were engaged along with the 1st respondent. Since there was no order for regularisation in the case of the 1st respondent, he raised a dispute before the Labour Court in I.D.No.72/2014.

4. The Principal Labour Court, Vellore, on the basis of the materials available on record arrived at a factual finding that the 1st respondent was entitled to an order of regularisation. The Award dated 18.11.2014 in I.D.No.72/2014 was challenged by the appellant before the Writ Court in

W.P.No.7922/2016.

5. The learned Single Judge taking into account the award passed by the Labour Court stayed the operation of the said award subject to the condition that the appellant shall deposit 50% of the back wages. The 1st respondent was permitted to withdraw the said amount.

6. It is the case of the appellant that the Labour Court was not correct in directing the appellant to reinstate the 1st respondent into service for the simple reason that he discontinued the work long back. The appellant further contended that the other employees continued to work in the post in which they were initially appointed. Since the 1st respondent abandoned the service, his case was not taken up for regularisation.

7. The core question is as to whether the Learned Single Judge was correct in directing the appellant to pay 50% of the back wages to the 1st respondent.

8. The liability to pay wages under Section 17-B of the Industrial Disputes Act, 1947, is the legal obligation of the employer. This issue was considered by the Supreme Court in **Rajeshwar Mahto vs. Alok Kumar Gupta, G.M., M/s.Birla Corporation Limited (2018 (3) SCALE 323.**

The Supreme Court in the said judgment made it very clear that in the event

of allowing the Writ Petition filed by the Management by setting aside the Award passed by the Labour Court, still there is a statutory liability to pay the wages to the employee under Section 17-B of the Industrial Disputes Act.

9. The appellant wanted stay of the award passed by the Labour Court. The learned Single Judge as a condition precedent for staying the execution of the award, directed the appellant to deposit 50% of the back wages. The 1st respondent was permitted to withdraw the said amount.

10. After hearing the learned Senior Counsel for the appellant and the learned Counsel for the 1st respondent, we are of the view that the interest of justice would be sub-served by directing the appellant to deposit a sum of Rs.4,00,000/- (Rupees Four Lakhs Only). The said amount shall be deposited on the credit of I.D.No.72/2014 on the file of the Principal Labour Court, Vellore. The 1st respondent shall be permitted to withdraw the said amount without giving security. There shall be a further direction to the appellant to pay the last drawn wages under Section 17-B of the Industrial Disputes Act w.e.f. 01.05.2017. We make it clear that while calculating the wages, the salary which the three other similarly situated permanent employees are presently receiving must be the bench mark. We give liberty to the appellant to offer employment to the 1st respondent pending disposal of the writ petition. In case, any such appointment order is issued, the same shall contain an indication that the appointment is subject to the result of the

writ petition. In case, the 1st respondent is not agreeable to work in spite of the appellant offering employment, there shall not be any liability to pay the wages under Section 17-B of the Industrial Disputes Act.

11. The Intra Court Appeals are disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

(K.K.SASIDHARAN, J.) (P.VELMURUGAN, J.)
28 March, 2018

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To

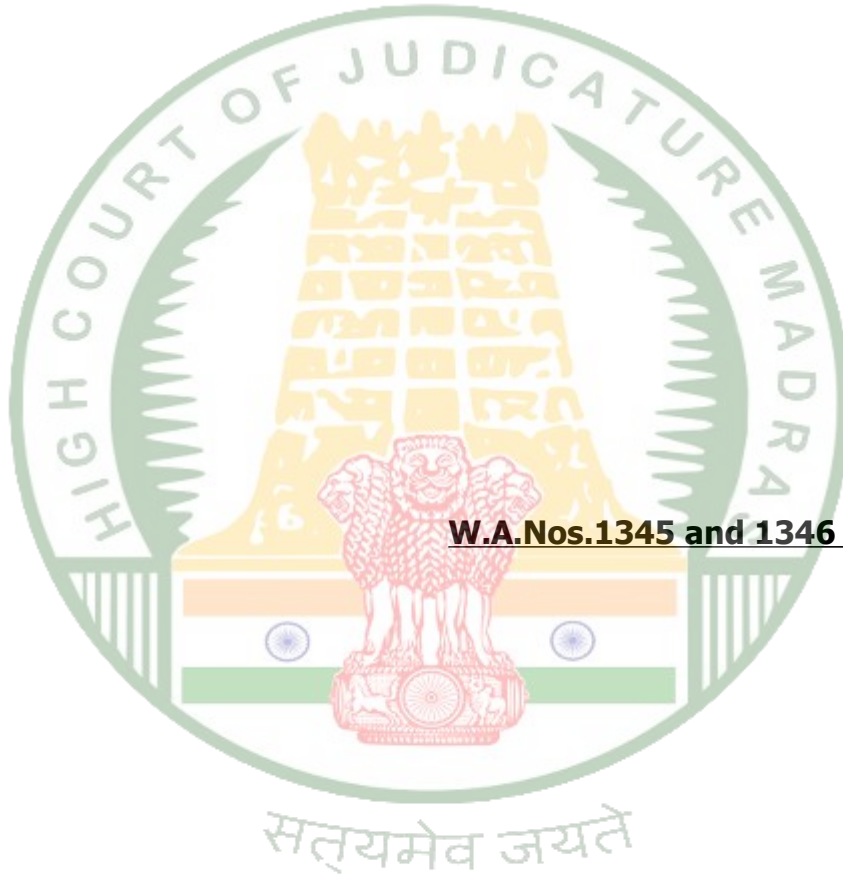
The Commissioner,
Thiruvannamalai Municipality,
Thiruvannamalai.



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**K.K.SASIDHARAN, J.
AND
P.VELMURUGAN, J.**

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