

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.42706 of 2016
& WMP No.36630 of 2016
& WMP No.4876 of 2018

The General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd.,
Vazhuthareddy, Salamedu, Villupuram Region,
Villupuram 605 602

... Petitioner

..vs..

1. K.Nagaraj (Ex Technical Staff No.Tr. No.0671),
C/o. Pandiyan, 154 Government Quarters, Villupuram
 2. The Special Deputy Commissioner of Labour,
DMS Compound, Chennai
- ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the second respondent made in A.P.no.157/2011, dated 04.07.2016 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr. A.Antony Arokiaraj
For Respondents : Mr. D.Veerasekaran, for R-1

O R D E R

The workman / first respondent, while working as Technical Staff, in the Villupuram Depot of the Corporation / petitioner, has absented himself unauthorizedly from 24.07.2009 till the date of the issuance of the basic report. On 25.08.2009, a charge memo was issued to the workman, calling for his remarks for the misconduct. Since there was no reply, an enquiry was conducted by the Corporation and after full-fledged enquiry, the Enquiry Officer concluded that the charges were proved. The show cause notices and the notices calling for remarks from the workman, dated 26.06.2010 and 11.10.2010, were sent by the Management. Since there was no reply to the said notices, a dismissal order dated 27.05.2011 was passed against the workman

and simultaneous proceedings were initiated under Section 33 (2) (b) of the Industrial Disputes Act, 1947 and the workman was issued with one month wages. On 27.05.2011, an Approval Petition was filed by the petitioner and the same was taken on file by the second respondent in A.P.No.157 of 2011, since the dispute was pending before the said authority. On 04.07.2016, the second respondent rejected the Approval Petition. Aggrieved over the said rejection order, the petitioner / Corporation has filed by this writ petition.

2. Heard both sides.

3. At the outset, the learned counsel appearing for the petitioner / Management has filed an affidavit, dated 07.09.2018, wherein, among other things, in paragraph 13, it is stated that the writ petitioner is willing to reinstate the first respondent without prejudice to the outcome of this writ petition, instead of paying last drawn wages under Section 17 (B) of the Industrial Disputes Act 1947 and also ready for final disposal.

4. As per the affidavit of undertaking given, the petitioner shall reinstate the first respondent / workman into service, forthwith. However, it is trite in law that the last drawn wage is the statutory amount to be paid by the employer. Section 17 (B) of the Industrial Disputes Act, 1947, states that the employer shall be liable to pay workman, during the period of pendency of proceedings in the High Court or the Supreme Court, the full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court.

5. In paragraph 8 of the Writ Miscellaneous Petition tagged with this writ petition, the workman has stated that he has been suffering without employment from the date of the dismissal and despite best efforts, he is not able to get any employment elsewhere from the date of dismissal of the service.

6. Hence, as per statute, it is clear that the petitioner has to pay 17-B wages to the workman for the interregnum period. Thus, the petitioner / Management is directed to pay the 17-B wages (last drawn wages) to the workman / first respondent herein, from the date of the filing of the writ petition till today, within a period of two weeks from the date of receipt of a copy of this order.

7. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Special Deputy Commissioner of Labour,
DMS Compound, Chennai

2.The General Manager,
Tamil Nadu State Transport Corporation,
(Villupuram) Ltd.,
Vazhuthareddy, Salamedu, Villupuram Region,
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SV(CO)
GSP(07/12/2018)