

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.07.2018

C O R A M

THE HON'BLE Mr.JUSTICE P.D.AUDIKESSAVALU

W.P.No.31229 of 2002

The Management,
ABT Parcel Service,
10/13-15 Kalingaravan Street,
Ramnagar, Coimbatore 641 009.

...Petitioner

vs

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.P.Balakrishnan (Deceased)

3.Kavitha

(R3 L.R. of the deceased R2 as per order dated
13.06.2008 in WPMP No.1915 of 2007 in W.P.31229/2002)

...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to call for the records of the first Respondent in I.D.No.273/98 and quash its award dated 11.01.2002.

For Petitioner: Mr.Haroon

for M/s.T.S.Gopalan & Co.

For Respondents: R1-Labour Court

Mr.A.Paneerselvam for R2 and R3

O R D E R

Heard Mr.Haroon, learned Counsel appearing for the Petitioner and Mr.A.Paneerselvam, learned Counsel appearing for the Second and Third Respondents.

2. The Second Respondent was employed as Supervisor in the Petitioner Company. He was dismissed from service by the Petitioner by order dated 18.12.1997 for misconduct after conducting an enquiry. The said order of dismissal was challenged by the Second Respondent before the First Respondent Labour Court, Coimbatore in I.D.No.273 of 1998. The Labour Court has recorded in para 4 of the award dated 11.01.2002 that the enquiry had been properly conducted and it has further been held in para 7 of the award that the charges against the Petitioner was also proved. However, the Labour Court at para 8

of the award had proceeded to interfere with the award on the sole ground that the Petitioner had unblemished service by directing reinstatement with continuity of service but without any backwages. In this regard, the learned Counsel for the Petitioner submits that there is clinching evidence in Ex.M-14, which was the second show cause notice regarding punishment in which reference has been made to the earlier order of suspensions, which were also marked as Ex.M-23 to M-28 before the Labour Court, to prove that the Second Respondent could not claim that his past records were without any blemish.

3. Learned Counsel for the Petitioner is well founded in his contention that the failure of the Labour Court to take into consideration the aforesaid past misconduct of the Second Respondent would amount to perversity requiring interference of this Court for having erroneously granted the benefits under Section 11-A of the Industrial Disputes Act, 1947. In these circumstances, the award of the Labour Court would have to be set aside and the matter remitted to the Labour Court for reconsideration on the question of taking into the past conduct of the Second Respondent as borne out from Ex.M-14 and Ex.M-23 to Ex.M-28.

4. At this stage, it requires to be taken note that the Second Respondent had expired after the filing of the Writ Petition on 19.10.2005 and his wife, as his sole legal representative, was brought on record as the Third Respondent by order of this Court dated 13.06.2008 in W.P.M.P. No.1915 of 2007. Having due regard to the fact that the Second Respondent is now no more, the learned Counsel for the Petitioner, as a humanitarian gesture, suggests that the Petitioner is willing to pay gratuity to the Third Respondent reckoning the period of service of the Second Respondent till the date of his death on 19.10.2005 but on the last drawn wages which was received by him at the time of dismissal on 18.12.1997, and he has also filed a Memo dated 26.07.2018 to that effect. Learned Counsel appearing for the Third Respondent accepts the aforesaid offer made by the learned Counsel for the Petitioner.

5. In these circumstances, the impugned award of the Labour Court dated 11.01.2002 in I.D.No.273 of 1998 is modified to the effect that the Second Respondent shall be deemed to be in service of the Petitioner till the date of his death on 19.10.2005, but shall not be entitled to any wages for the period from the date of dismissal on 18.12.1997 till his date of death but would be paid gratuity for the period till his death on 19.10.2005 on the last drawn wages, which he received on 18.12.1997. The gratuity amount shall be paid by the Petitioner to the Third Respondent by 30.09.2018.

6. The Writ Petition is disposed of on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vjt

To

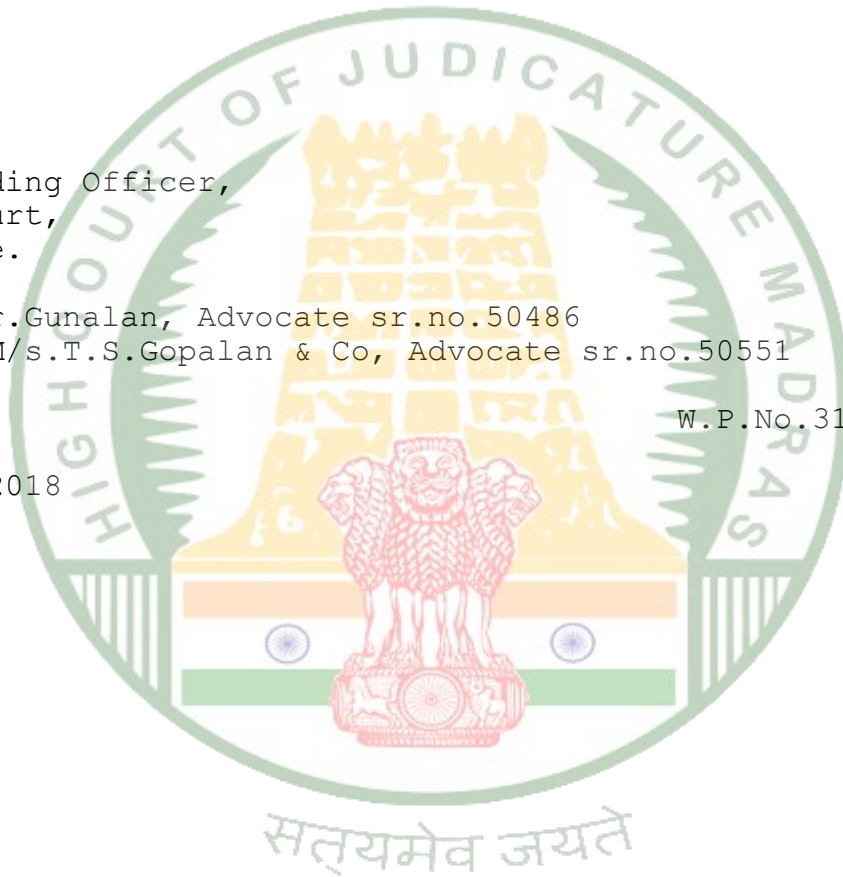
The Presiding Officer,
Labour Court,
Coimbatore.

+1cc to Mr.Gunalan, Advocate sr.no.50486

+1cc to M/s.T.S.Gopalan & Co, Advocate sr.no.50551

W.P.No.31229 of 2002

nr 12/09/2018



WEB COPY