

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2018

CORAM

THE HON'BLE DR. JUSTICE S.VIMALA

W.P.No.8466 of 2017

B.Sampath

... Petitioner

versus

The Managing Director,
State Express Transport Corporation,
(Tamil Nadu) Ltd.,
Anna Salai,
Chennai - 600 002.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, to direct the respondent to give reinstatement to the petitioner in view of the rejection of approval dated 09.03.2007 in A.P.No.304 of 2004 filed under Section 33(2)(b) of Industrial Disputes Act, 1947 and to pay backwages from the date of dismissal till the date of reinstatement.

For Petitioner : Mr.S.T.Varadarajulu

For Respondent : M/s.Rajani Ramdoss

ORDER

Writ petition has been filed seeking direction to the respondent to give reinstatement to the petitioner in view of the rejection of the approval petition filed in A.P.No.304 of 2004 under Section 33(2)(b) of the Industrial Disputes Act dated 09.03.2007 and to pay backwages from the date of dismissal till the date of reinstatement.

2. The writ petitioner who joined in the services of the respondent Corporation as a Driver in the year 1989, confirmed in 1990, was terminated from service on 18.11.2004, after holding a domestic enquiry. As the dispute was pending before the Commissioner of Labour, approval was sought for in A.P.No.304 of 2004 and it was rejected on 09.03.2007. As the approval was rejected, the petitioner is deemed to be in service.

3. As against the rejection of approval, the Management filed the writ petition in W.P.No.30683 of 2007, that was also dismissed on 08.09.2011. Thereafter, despite repeated request by the petitioner herein, he was not given employment. The representations dated 10.08.2012, 24.06.2015 and 03.01.2017, seeking reinstatement, did not evince any response. Hence, the present writ petition has been filed.

4. The learned counsel for the respondent vehemently opposed the petition, stating that only the last representation dated 03.01.2017 was received by the respondent and no other. It is also contended that there is inordinate delay in approaching the respondent seeking reinstatement and therefore, the petition must be dismissed.

5. True that even though the writ petition was dismissed in the year 2011, the present writ petition has been filed only in the year 2017. The learned counsel for the petitioner would submit that the petitioner has been approaching the respondent in person as well through letters and as the petitioner was not able to reach out, the petitioner cannot be accused of any delay.

6. When the approval petition is dismissed and thereafter, the dismissal of the approval petition was also upheld even in the year 2011, it is the duty of the Management to have offered reinstatement. However, there is a proof to show that there was a representation seeking reinstatement only in the year 2017 and not before. However, the petitioner might have personally went and asked for as contended by him. In any event, the writ petition should have been filed within a reasonable time. The delay alone cannot be the reason to decline the legal entitlement of reinstatement to the petitioner, especially, when the action of the respondent was not approved by the High Court. However, this delay should not cause prejudice to the Management.

7. There is no proof on the side of the petitioner to show that he was not gainfully employed elsewhere in order to make him eligible for claiming backwages.

8. Under the circumstances, balancing the interest of both sides, this Court directs that the petitioner shall be reinstated into service on or before 01.10.2018. It is made clear that the petitioner will not be entitled to any backwages from the date of non-employment till 30.09.2018. There will not be any continuity of service for the purpose of calculation of pension and gratuity from the year 2011 till 30.09.2018.

9. With these direction, the writ petition is disposed of.
No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Managing Director,
State Express Transport Corporation,
(Tamil Nadu) Ltd.,
Anna Salai,
Chennai - 600 002.

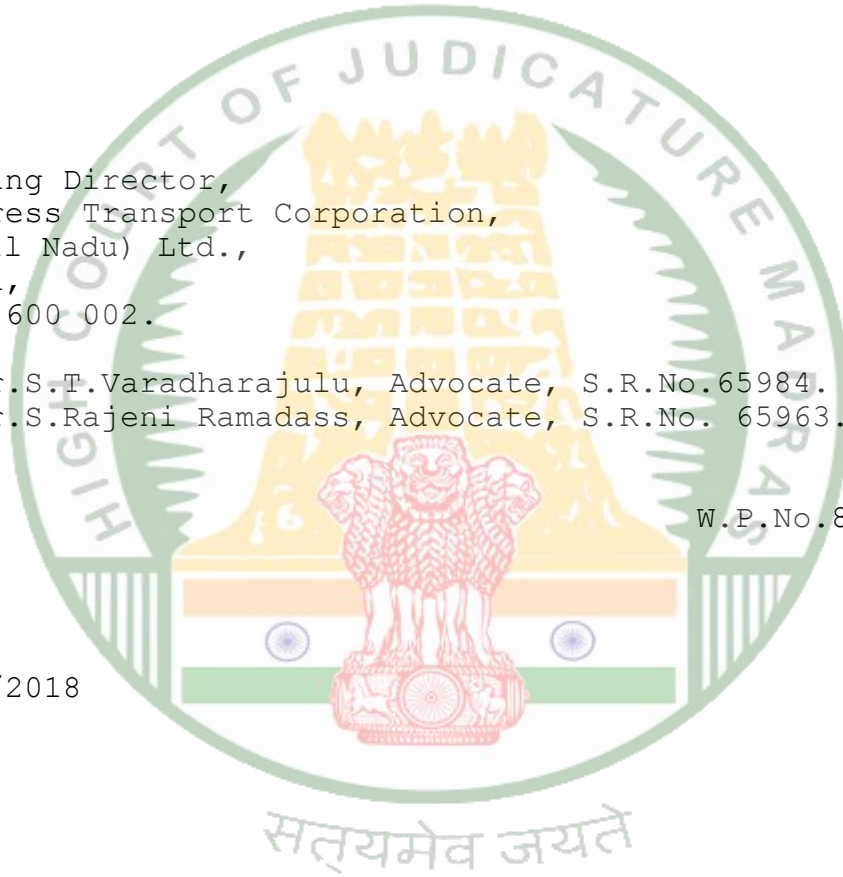
+1cc to Mr.S.T.Varadharajulu, Advocate, S.R.No.65984.

+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No. 65963.

W.P.No.8466 of 2017

NRJK (CO)

rrs 25/09/2018



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