



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.11318 of 2016

S.Ramakrishnan

... Petitioner

Vs.

1. The Managing Director,
The State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai - 2.

2. The Branch Manager,
The State Express Transport Corporation Ltd.,
Near Mattuthavani, Madurai.

... Respondents

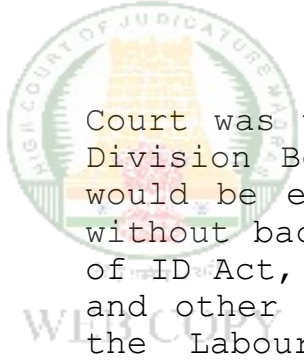
Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus to direct the respondents to calculate & pay the petitioner's gratuity, and pension benefits on the basis of basic pay drawn on 31.03.2002, i.e., at the time of superannuation of petitioner as per the direction of Division Bench of this Court in W.A.No.406 of 2016, dated 16.03.2016 within a time frame fixed by this Court.

For Petitioner	: Mr.R.Ramasamy
For Respondents	: Mr.K.Sathiya Singh

O R D E R

The petitioner has come forward with this writ petition for issuance of a Writ of Mandamus to direct the respondents to calculate and pay the petitioner's gratuity, and pension benefits on the basis of basic pay drawn on 31.03.2002, i.e., from the date of superannuation of petitioner, as per the direction of Division Bench of this Court in W.A.No.406 of 2016, dated 16.03.2016, within a stipulated time.

2.The case of the petitioner is that he was dismissed from service on 03.06.1993 on the ground that he has caused a fatal accident on 05.11.1991. The Labour Court, Madurai, by an award, dated 10.11.2003, in I.D.No.61 of 1998, interfered with the order of dismissal and directed reinstatement without backwages but with continuity of service. The petitioner attained the age of Superannuation on 31.03.2002. Since the award passed by the Labour



Court was the subject matter of writ petition and writ appeal, the Division Bench has upheld the award and held that the petitioner would be entitled to reinstatement with continuity of service but without backwages. The award became final under Section 17 and 17 A of ID Act, 1947. Aggrieved by the non-payment of terminal benefits and other benefits, the petitioner filed in C.P.No.64 of 2012 and the Labour Court by an order, dated 10.06.2014, ordered the management to pay a sum of Rs.31,125/-. Though the petitioner is entitled to more benefits, as the Labour Court has granted continuity of service, according to the petitioner, the terminal benefits was granted based on last pay of the year 2002 i.e., Rs.4,460/- and they have not granted the terminal benefits based on the pay which he would have been entitled to on the day of retirement namely Rs.7,762/-. Before the Labour Court, the petitioner filed a memo to that effect and the same was accepted.

3.The case of the respondent is that the petitioner having accepted entire amount due to him have been paid in the light of the order of the Labour Court in C.P.No.64/2012. The petitioner has not agitated with regard to non granting of any other benefit by Labour Court in C.P. As the petitioner did not choose to file any writ petition challenging the said award/order and the entire amount due to the petitioner have been paid and the benefits have been granted in terms of the pay which would have drawn on the date of retirement. The petitioner have no right to claim any other amount and that the mandamus is not at all maintainable as there is disputed question of fact. Hence this writ petition has to be dismissed.

4.Heard both sides.

5.It is seen from the records that pursuant to the award, the petitioner was notionally reinstated in service and as the petitioner has already obtained the age of Superannuation, the respondent approved to grant pensionary benefits. The award of the Labour Court granting the relief of reinstatement without backwages have been confirmed by this Division Bench of this Court. The petitioner's claim petition was allowed in part and the respondent was directed to pay a sum of Rs.31,125/-. Merely because the petitioner has accepted the award of the Labour Court, it cannot be construed that he has accepted the act of the management in its entirety. The petitioner's case is that the pensionary benefits should have been given based on the wage that he would have drawn on the date of his retirement. If the petitioner is aggrieved by the order in C.P.No.64/2012 nothing prevented the petitioner from approaching this Court challenging that portion of the order of the Labour Court in not granting the relief. It is the duty cast upon the Labour Court to compute the amount due to the employees, unless there is a settlement between the parties. The computation means, the Labour Court will have to work out and calculate the amount due to the party concerned and not merely accepting the statement of the management or the workmen, unless the statement produced by the one

other party is correct.

6.The award of the Labour Court has become final and as per the award the amount has been granted to the petitioner which has been received by the petitioner. However, this will not proclude the petitioner from challenging the order in C.P.No.64 of 2012. If the petitioner is otherwise entitled to extra benefits in terms of computation, he could have challenged the said order before this Court. Without doing so, he approached this Court only seeking mandamus which cannot be accepted. When the respondents states that the entire amount has been paid and no amount is due to be paid to him, the only recourse to the petitioner is to challenge the award. Based on the award of the Labour Court the petitioner would be entitled to reinstatement without backwages, but with continuity of service. Hence, this Court is not inclined to grant relief of mandamus as sought for by the petitioner.

7.Accordingly, this writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Managing Director,
The State Express Transport Corporation Ltd.,
Pallavan Salai, Chennai - 2.
2. The Branch Manager,
The State Express Transport Corporation Ltd.,
Near Mattuthavani, Madurai.

+ 1 CC TO Mr.K.SATHIYA SINGH, ADVOCATE IN SR No. 84980
+ 1 CC TO Mr.R.RAMASAMY, ADVOCATE IN SR No. 85046

TM
TE/RSK/SAR-2 : 27/11/2018 : 3P/5C

W.P. (MD) No.11318 of 2016
17.09.2018