

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.676 of 2019

WMP.No.744 of 2019

G.Krishnamurthy
Petitioner

Vs

- 1.The Principal Labour Court, Sathuvachari, Vellore 632 009
- 2.The Management, by its General Manager
Tamil Nadu State Transport Corporation
(Villupuram) Limited, Vellore Region, Rangapuram
Vellore 632009
- 3.The Managing Director, Tamil Nadu State Transport Corporation
(Villupuram) Limited, Head Officer,
Vazhutha Reddy, Villupuram 605602
Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the order dated, 23.05.2018, made in ID.No.32 of 2017, on the file of the Principal Labour Court, Sathuvachari, Vellore and to quash the same.

For Petitioner : Mr.R.Vinoth Kumar

For Respondent : Mrs.Rajeni Ramadoss,
Standing Counsel-RR2 and 3

ORDER

The prayer in this Writ Petition is to quash the order dated, 23.05.2018, made in ID.No.32 of 2017, on the file of the Principal Labour Court, Sathuvachari, Vellore.

2. According to the learned counsel for the Petitioner, the Petitioner had joined the services of the Respondent Corporation as a Driver in the year 1996. In the year 2015, for having caused an accident, disciplinary proceedings were initiated against him and he was removed from service by proceedings, dated 06.09.2016. Challenging his removal from

service, the Petitioner had raised an industrial dispute in ID.No.32 of 2017 before the 1st Respondent. In and by the impugned order, the 1st Respondent, while holding that the Petitioner was due to retire in the month of February 2017, had held the Respondent Corporation was bound to treat the Petitioner into service with all attendance benefits and continuity of service till his age of superannuation and held the said relief, as infructuous. However, his claim with regard to back wages was dismissed. Though his actual date of superannuation is 28.02.2019, it was inadvertently assumed by the 1st Respondent that the Petitioner had attained the superannuation in February, 2017 and consequently, he was not entitled for reinstatement. In such circumstances, this Writ Petition has been filed, seeking the reliefs, as stated above.

3. The learned counsel for the Petitioner is challenging only the findings of the 1st Respondent that since the Petitioner had attained superannuation during February 2017, his claim for reinstatement had become infructuous, on the ground that the Petitioner is due to retire only on 28.02.2019. He would further submit that in view of such inadvertent error in the impugned order, it was consequently held that Respondent Corporation was bound to regulate the service of the Petitioner into service with all attendance benefits till the date of superannuation, which was stated as February 2017, which is factually incorrect. He would further submit that if the 1st Respondent would have stated the correct date of superannuation, the Petitioner would have become eligible for reinstatement in service till 28.02.2019, which is his actual date of retirement and accordingly, the impugned order may be modified to that extent alone.

4. On the other hand, the learned standing counsel for the Respondent Corporation would also fairly submit that the Petitioner is actually going to attain superannuation on 28.02.2019 and the said error may be corrected, however, without prejudice to their rights in respect of the other claims of the Petitioner, it may be left to them and that the Petitioner has to approach the 1st Respondent to seek his remedy to review the impugned order.

5. This court heard the learned counsel on either side and carefully considered their submissions also perused the materials placed on record.

6. The Petitioner has assailed the impugned order only in respect of the findings of the 1st Respondent relating to the date of superannuation, which, according to him, is factually incorrect, which is also not disputed by the Respondent Corporation.

7. It is well settled that though the review on merits by the Labour Court is not permissible, as there was no such power stipulated under the Act, however, review of its own decision by it, is permissible only when there is an apparent error on the face of record or there is a typographical error crept in its order, as has been held in various catena of decision of the High Courts and the Honourable Supreme Court. The said proposition of law is also not disputed by the learned counsel for the Respondent Corporation.

8. On a perusal of the records, it is seen that there is an error apparent in stating the date of superannuation of the Petitioner in the impugned order by the 1st Respondent, since it is seen that the Petitioner is admittedly due to retire on 28.02.2019 and hence, the findings of the 1st Respondent in the impugned order in paragraph 14 with regard to the date of superannuation is modified to the effect that the Petitioner is due to attain the age of the superannuation on 28.02.2019 and consequently, he is entitled for reinstatement into service till 28.02.2019 and he is also entitled for other consequential attendant benefits till such date. To that extent, the impugned order is modified, however, without prejudice to the rights of the Respondent Corporation to challenge the law in respect of the other claims of the Petitioner. In other words, the impugned order relating to dismissal of the claim for reinstatement, in view of the aforesaid inadvertent error crept in stating the date of superannuation, is set aside and the other claim of the relating to back wages, which was dismissed by the 1st Respondent, is confirmed.

9. In the result, this Writ Petition is partly allowed, to the extent mentioned above. No costs. Consequently, the connected MP is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

Srcm
To

1.The Principal Labour Court, Sathuvachari, Vellore 632 009

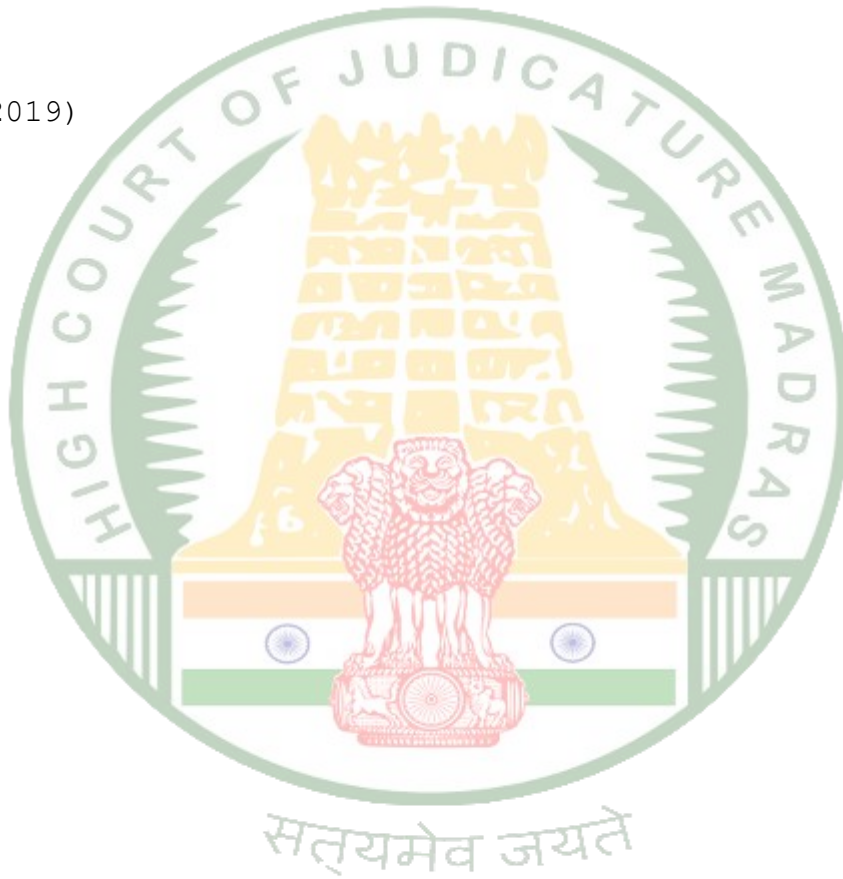
2.The Management, by its General Manager, Tamil Nadu State Transport Corporation (Villupuram) Limited, Vellore Region, Rangapuram, Vellore 632009

3.The Managing Director, Tamil Nadu State Transport Corporation
(Villupuram) Limited, Head Officer, Vazhutha Reddy, Villupuram
605602

+1 CC to Mr.R.Vinoth Kumar, Advocate sr 7053.
+1 CC to Mr. Rajeni Ramadoss, Advocate sr 6712.

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NMI (CO)
SP (04/02/2019)



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