

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1840 of 2013

and M.P.No.2 of 2013

State Express Transport Corporation Ltd.,
Rep. by its Managing Director,
Pallavan Salai,
chennai-600 002.

... Petitioner

-vs-

1.The Presiding Officer,
Labour Court, Salem.

2.Pannerselvam

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the 1st Respondent in C.P.No.44 of 2009 dated 23.03.2011 and quash the same.

For Petitioner : Mrs.S.Rajeni Ramadass
For R1 : Court
For R2 : Mrs.G.Chamki Raj

O R D E R

The Petitioner / Management has come forward with the present Writ Petition, challenging the order of the Labour Court dated 23.03.2011 passed in C.P.No.44 of 2009.

2. For the sake of brevity, the parties would be referred to by their nomenclature as per the Order dated 23.03.2011 as 'the Petitioner / Workman' (in short 'the Workman') and 'the Respondent / Management' (in short 'the Management') and the facts are also being derived from the said Order.

3. From the facts pleaded therein, it is seen that the Workman was discharged from his service on the ground of medical invalidation and in the Industrial Dispute raised in I.D.No.72 of 2006, the Labour Court, by an Award dated 12.05.2008 directed the Management to provide an alternative employment to the Workman in the post like Helper etc., from the date of his discharge, namely, 23.06.1999 with all service benefits.

4. According to the Management, though the Workman has been reinstated into service as per the Award of the Labour Court, he is not entitled to bonus and leave salary as ordered by the Labour Court in C.P.No.44 of 2009 on 23.03.2011 and therefore, the Management is before this Court, questioning the same. It is the argument put forth by the Management that they are liable to pay only Rs.8,02,383/- and not the amount as directed to be paid by the Labour Court, viz., Rs.11,66,300/-. It is further stated that after deducting the amount under various heads, the net amount payable to the Workman comes to only Rs,8,02,383/-.

5. It is seen that the Writ Petition was admitted by this Court on 28.01.2013, by granting the relief of interim stay on the same date and the Workman had not taken any steps to vacate the interim order. Though eight documents were marked on the side of the Workman, the Labour Court had granted the relief as claimed by the Workman, ignoring the fact that the Workman would not be entitled to the benefits after the grant of interim stay by this Court as mentioned supra. Hence, this Court is of the view that the order of the Labour Court needs to be interfered with and modified and the Workman would be entitled to the amount on the basis of the calculation memo dated 09.08.2019.

6. At this juncture, learned counsel for the Workman has pointed out that the total back wages has been wrongly calculated upto 30.03.2009 in the Calculation Memo dated 09.08.2019 and the Workman was reinstated only on 01.09.2010 and that five months wages between 01.04.2010 and 31.08.2010 has not been taken into account in the said calculation memo.

7. In reply to the above, the learned counsel for the Management has submitted that the Management is willing to pay the difference in amount and by oversight, the calculation of back wages for five months period has been left out.

8. In view of the above, the Writ Petition is partly allowed. It is made clear that the grant of interest as ordered by the Labour Court in Paragraph No.11 dated 23.03.2011 should be calculated from the date of Award in I.D.No.72 of 2006 till the date of interim stay granted by this Court on 28.01.2013 at the rate of 6% per annum. The amount due to the Workman shall be paid within 45 days from the date of receipt of a copy of this order, failing which, the same shall carry interest as per the order of the Labour Court, namely, from the date of Award till the date of interim stay granted in the Writ Petition and from today, it will be 15% per annum till the date of realisation.

9. It is represented by Mrs.G.Chamki Raj, Advocate that the deduction towards income tax has not been made in different spell, which has been strongly refuted by the learned counsel for the Management, stating that the provision of spread over has been duly provided. It is made clear that in case there was no spread over, the amount payable to the Workman shall be spread over for the purpose of income tax in the light of the decision of the judgment of the Hon'ble Supreme Court in the case of Sundaram Motors Pvt. Ltd., vs. Ameerjan and another, reported in 1985 LLJ II 22, and a copy of Form-16 shall be handed over to the Workman in order to enable him to claim refund, if he is otherwise eligible for such return. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

The Presiding Officer,
Labour Court,
Salem.

+lcc to M/s.K.Elango, Advocate sr.68422
+lcc to Mrs.S.Rajeni Ramadass, Advocate sr.68628

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rk(co)
nr 31/10/2019

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