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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2019

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.15484 of 2019

Thirumathi.M.Malliga

...Petitioner

vs.

1.The Senior Deputy Manager (HR & D),
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam,
Chennai - 600 002.

2.The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund,
Pallavan Salai, Chennai - 600 002.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the record pertaining to the letter No.2699/LS(CM-V)/M.T.C/2017 dated 12.04.2019 of the 1st respondent, quash the same and consequently direct the 1st respondent to pay backwages from 26.12.2007 to 25.06.2014, Family Pension from July 2014 and other terminal benefits such as Gratuity, PF to the petitioner.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents : Ms.Rajini Ramadoss for R1 and R2

ORDER

The writ petition has been filed by the petitioner to quash the letter No.2699/LS(CM-V)/M.T.C/2017 dated 12.04.2019 of the first respondent and consequently direct the first respondent to pay back wages from 26.12.2007 to 25.06.2014, Family Pension from July 2014 and other terminal benefits such as Gratuity, PF to the petitioner.

2.The case of the petitioner is that the petitioner's husband was in employment with the first respondent Corporation as Driver from 24.08.1989 and lastly, he was working at Perambur depot. He had put in nearly 18 years of service, while he was in service a charge sheet dated 13.04.2007 was issued to the petitioner alleging that her husband was absented for duty from 21.09.2006. Her husband



was suffering from viral fever and he informed the Branch Manager about his health condition and requested for medical leave. However, the respondent proceeded with disciplinary action. Thereafter, the respondent dismissed the petitioner from service on 26.12.2007 and the respondent had not file Approval Petition under Section 33(2)(B) of the Industrial Disputes Act. For non-filing of the Approval Petition would invalidate the dismissal order and the similar issue was held by the Hon'ble Apex Court in 2002 (1) LNN page 639 in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., vs. Ramgopal sharma & others. In the meanwhile, the petitioner husband died on 25.06.2014 due to the several ill health. However, the petitioner husband is entitled to get back wages from the date of dismissal till the date of death and other retirement benefits from the respondent. As against in action, the petitioner filed a writ petition before this Court in W.P.No.13998 of 2017 before this Court. This Court by its order dated 30.01.2019 disposed of the writ petition by issuing a direction to the respondent to consider and pass orders. The petitioner sent representation and the same was refused by the respondent dated 12.04.2019. Challenging the same, the present writ petition has been before this Court.

3.The learned counsel appearing for the petitioner would submit that the petitioner's husband was in employment with the first respondent Corporation as Driver from the year 1989. He had put in nearly 18 years of service, while he was in service a charge sheet dated 13.04.2007 was issued to the petitioner alleging that her husband was absented for duty from 21.09.2006. Her husband was suffering from viral fever and the same was informed the Branch Manager about his health condition and requested for medical leave. However, the respondent proceeded with disciplinary action. The respondent dismissed the petitioner from service on 26.12.2007 and the similar situated issue was came up before this Court. Apart from the Hon'ble Apex Court, the same issue was considered by this Court in W.P.No.39434 of 2006, by its order dated 19.06.2012 allowed the writ petition and the relevant paragraph is extracted hereunder:

14.In order to seek umbrage of Section 33(2)(b), the workman should not only be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, but also he must be 'concerned in the dispute' pending before the authority referred to therein. As a matter of fact, every workman need not necessarily be a workman of concerned in the pending Industrial Dispute. In the present case on hand, when the seal of approval/permission admittedly has not been obtained from the Commissioner of Labour, Chennai-600 006, being the competent authority, in regard to the dismissal of the petitioner from service dated 20.10.2002, then his dismissal from service is inoperative and ineffective in the eye of law. Therefore, he is entitled to get all the



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consequential benefits as if he is deemed to be in service for the period from 27.04.1984 till his superannuation on 20.01.2005 (original age of retirement at 58 years). Therefore, the writ petition filed by the petitioner succeeds.

In view of the above decision, the Hon'ble Apex Court and the order of this Court, the petitioner is eligible for retirement benefits. However, the petitioner is ready to forgo the back wages from the date of dismissal till the date of death.

4.The learned standing counsel appearing for the respondent would submit that though the approval petition was not filed on time due to long delay, the same cannot be considered. Hence, she prayed for dismissing the order.

5.Considering the facts and circumstances, the petitioner is ready to forgo the back wages from the date of the dismissal till the date of death. I am inclined to issue direction to direct the first respondent, to settle the entire retirement benefits and other benefits without any back wages within a period of six weeks from the date of receipt of a copy of this order.

6.With the above observation and direction, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Senior Deputy Manager (HR & D),
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam,
Chennai - 600 002.

2.The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund,
Pallavan Salai, Chennai - 600 002.

+1cc to M/s.S.T.Varadarajulu, Advocate Sr.96731
+1cc to M/s.S.Rajeni Ramadoss, Advocate Sr.97475

W.P.No.15484 of 2019

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srg 10/12/2019

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