

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Appeal No.2913 of 2019 and C.M.P.No.18845 of 2019

The General Manager
Tamil Nadu State Transport Corporation
Coimbatore Limited, Chennimalai Road
Erode 638 001.

... Appellant

Vs.

1.A.P.Elamvazhuthi
2.The Special Commissioner of Labour
Chennai.

... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent,
against the order passed by this Honourable Court dated
05.08.2019 in W.M.P.No.22494 of 2019 in W.P.No.22870 of 2019.

Prayer in WMP No.22494 of 2019:to grant interim stay of order
dated 27.7.2018 passed by the Second Respondent in A.P.No.241
of 2014 pending disposal of the above Writ Petition.

Prayer in W.P.No.22870 of 2019:

Petition filed under Article 226 of the Constitution of
India, calling for the records relating to the order dated
27/07/2018 passed by the Second Respondent in A.P.No.241 of
2014 and to quash the same.

For Appellant : Mrs.S.Rajeni Ramadass

For Respondents: No appearance - for R1
Mr.J.Pothiraj,
Special Government Pleader-for R2

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J)

The Management of Tamil Nadu State Transport Corporation Limited has filed the present intra court appeal against the interim order passed by the learned Single Judge on 05.08.2019 in W.M.P.No.22494 of 2019 in W.P.No.22870 of 2019. The operative portion of the order passed by the learned Single Judge is quoted below for ready reference.

"3. As the past records of the first respondent/workman is very bad, this Court is of the view that the authority ought not to have dismissed the Approval Petition. Since the authority has rejected the Approval Petition, the first respondent / workman is deemed to be in service, as the order passed under Section 33(2)(b) of the Industrial Disputes Act, 1947 will have a greater force than the order of reinstatement passed by the Labour Court.

4. In case of award of reinstatement, the question of payment of wages to the workman under Section 17-B of the Industrial Disputes Act, 1947 will arise. As per the order of the dismissal is held to be non-est in the eye of law, in the light of the decision rendered by this Court in the case of Tata Iron and Steel Company Ltd., Vs. G.Ramakrishna Ayyar, reported in 1950 LLJ 1043, the petitioner would be entitled to current wages.

5. In view of the above, there shall be an order of interim stay subject to the condition that the petitioner / Management deposits the arrears of wages due to the first respondent / workman from the date of order passed in the Approval Petition till 31.07.2019, within a period of eight weeks from the date of receipt of a copy of this order. From the month of August 2019 onwards, the petitioner / Management shall continue to pay current wages (not the last drawn wage) to the first respondent / workman on or before 10th of subsequent months. Notice."

2. Learned counsel for the appellant Corporation Ms.Rajeni Ramadass submitted that, while holding that the past record of the respondent workman was bad and the question of claiming payment of wages under Section 17-B will arise only in case of award of reinstatement is made, still by the observations in

paragraph 5 of the impugned order quoted above, the learned single Judge has not only directed the deposit of the entire arrears of wages due to the respondent workman, but had further directed the Management to pay current wages (not the last drawn wage) on or before 10th of the subsequent months. Nobody has appeared on behalf of the respondent workman, despite service and the name of M/s.V.Sivakumar and D.Muthu appear in the cause list.

3. We have heard the learned counsel for the appellant Management. Having heard the learned counsel for the appellant Management, we are of the opinion that the learned single Judge has erred, with great respects, in making the observations in paragraph 5 of the impugned interlocutory order. The petition was filed by the Management against the rejection of the approval by the competent authority under Section 33(2)(b) of the Industrial Disputes Act and till that issue is finally decided, by an interim order, the learned single Judge ought not to have directed the payment or deposit of the entire arrears due to the respondent workman and further directed the payment of current wages, without deciding the rival rights of the parties. These rights could be decided only at the time of final hearing of the writ petition.

4. Therefore, we are inclined to allow this intra Court appeal by the Management, setting aside the observations made by the learned Single Judge in paragraph 5 of the impugned order dated 05.08.2019, and we request the learned single Judge to expeditiously decide the writ petition itself, after giving an opportunity of hearing to both the parties. We hereby do so. However, the stay of the impugned order dated 27.07.2018 passed in A.P.No.241 of 2014, granted by the learned single Judge in W.M.P.No.22494 of 2019 in W.P.No.22870 of 2019, shall continue till the disposal of the writ petition and the respondent workman shall also be at liberty to make appropriate petition under Section 17-B before the learned single Judge.

5. The Writ Appeal is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Special Commissioner of Labour,
Chennai.

2.The Section Officer,
Judicial Section,
High Court, Madras-104.

+1cc to Ms.S.Rajeni Ramadass, Advocate Sr.101690

+1cc to Mr.V.Sivakumar, Advocate Sr.101113

W.A.No.2913 of 2019

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srg 10/01/2020