

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.13998 of 2017

Thirumathi.M.Malliga

...Petitioner

Vs

1.The Managing Director,
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

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to direct the respondents to pay backwages from 26.12.2007 to 25.06.2014 and Family pension from July, 2014 and other terminal benefits to the petitioner.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents: Ms.Rajini Ramadass

O R D E R

This writ petition is filed seeking for a Mandamus directing the respondents to pay backwages from 26.12.2007 to 25.06.2014 and family pension and other terminal benefits to the petitioner.

2. The case of the petitioner, in short, is as follows:

The petitioner's husband was employed as Driver in the 1st respondent Corporation from 24.08.1989 and he had put in nearly 18 years of continuous service. In pursuant to the disciplinary proceedings initiated against the petitioner's husband, he was dismissed from service on 26.12.2007. At the time of the dismissal of the petitioner's husband, a common dispute was pending before the Commissioner of Labour. Therefore, the

respondents have to file application under Section 33 (2) (B) of Industrial Disputes Act, for seeking approval of the dismissal. But the respondents did not file any such application. Non-filing of such application invalidate the dismissal. Therefore, the petitioner's husband was entitled for reinstatement with backwages and with continuity of service. The respondents did not give employment to the petitioner's husband nor filed the approval petition. In the mean time, the petitioner's husband died on 25.06.2014. Therefore, the petitioner sent a representation on 10.06.2015 to settle the legal dues available to the petitioner's husband. Since the said representation is not considered, the present writ petition is filed with the relief as stated supra.

3. A counter is filed by the 1st respondent, wherein it is stated that petitioner is not entitled to approach this Court and file writ petition under Article 226 of the Constitution of India without approaching the Authority under Section 33 (A) of the Industrial Disputes Act, 1947, by making a complaint.

4. The learned counsel for the petitioner, after relying on the decision of the Apex Court reported in 2002 (1) L.L.N. 639, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and other, contended that in the absence of approval of dismissal, the dismissal order issued on the petitioner's husband on 26.12.2007, can not be sustained and consequently, all the benefits should be given to the petitioner including backwages from the date of such dismissal till the date of death of her husband and also by paying family pension from July, 2014.

5. On the other hand, it is contended by the learned counsel for the respondents that even though no approval application was filed, the fact remains that the petitioner's husband did not report duty and make any request or application seeking for reinstatement till his death. Therefore, the petitioner is not justified in seeking backwages. The learned counsel further contended that the petitioner has approached this Court and filed the present writ petition without making any request before the respondents by way of any representation. The representation dated 10.06.2015 said to have been sent to the respondents, is not available with the respondents.

6. Heard both sides.

7. It is seen that the petitioner claiming to be the legal heir of the deceased employee, seeks for certain benefits in pursuant to his death, specifically by questioning that the dismissal of her husband is not sustainable in the absence of approval obtained under Section 33 (2) (B) of the Industrial Disputes Act. In support of such contention, the petitioner

sought to rely upon the decision of the Apex Court reported in 2002 (1) L.L.N. 639, Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and other.

8. Needless to say that the claim of the petitioner has to be considered by the respondents on merits and in accordance with law by considering her application said to have been filed on 10.06.2015. Since, it is stated by the learned counsel for the respondents that no such application is pending before the respondents, this Court is of the view that it is better for the petitioner to file one more representation before the respondents seeking for the relief, which according to the petitioner, is legally sustainable.

9. Needless to say that if any such application is filed, it is for the respondents to consider such application and pass appropriate orders on merits and in accordance with law in respect of the relief, which is legally sustainable. While considering the application to be filed by the petitioner, the respondents shall also take note of the decision of the Apex Court reported in 2002 (1) L.L.N. 639 (cited supra) and pass appropriate orders accordingly.

10. Thus, this Writ Petition is disposed of with a direction as follows:

a) The petitioner shall make a fresh representation to the respondents within a period of two weeks from the date of receipt of a copy of this order.

b) On receipt of such representation, the respondents shall pass appropriate order on merits and in accordance with law and in the light of the observation stated supra, within a period of four weeks thereafter. No costs.

Sd/-

Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

gsi/vri

To

1. The Managing Director,
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 Mr.S.Rajeni Ramadass, Advocate SR.No.8959

+1cc to Mr.ST.Varadarajulu, Advocate SR.No.7869

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PPA (CO)
GMY (26/02/2019)



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