

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P.No.364 of 2017
and WMP.No.397 of 2017

The General Manager
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Vazhuthareddy, Salamedu
Villupuram Region
Villupuram-605 602. ..Petitioner

Vs

1.S.Sekar
2.The Special Deputy Commissioner of
Labour
D.M.S.Compound
Chennai-6 ..Respondents

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorari, to call for the records of the 2nd respondent made in A.P.No.257/2012 dated 12.10.2015 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.K.J.Sivakumar

For Respondents : Mr.R.Muralidharan for R1
R2- Authority- No appearance

ORDER

The Transport Corporation/Management is the petitioner herein. Challenging the rejection of Approval Petition filed under Section 33(2) (b) of the Industrial Disputes Act, 1947, the present writ petition is filed.

2. The 2nd respondent/Authority has rejected the approval on the ground that one month wages has not been paid in terms of Section 33 of the Industrial Disputes Act, 1947, and that there was a revision of Dearness Allowance with effect from 01.07.2012 and that the employee was dismissed on 20.09.2012.

3. It is no doubt true that there was a Government Order passed in G.O.362 dated 05.10.2012, granting retrospective revision of wages to other co-employees, who worked with the Workman. It is to be noted that the Workman was dismissed from service on 20.09.2012, prior to issuance of the aforesaid Government Order. Therefore, it is apparent that at the time of passing of dismissal order, there was no revision at all and the Management cannot be expected to pay additional amount on the presumption that there would be a revision of wages. However, the Management has now stated that if there is any shortfall of the amount payable to the Workman, it would be paid to him.

4. It is not the case of the Workman that the Government Order with regard to revision of wages had been passed even before the order of dismissal and the Management had paid one month wages without taking into account the said revision and therefore, the one month wages paid to the Workman on 20.09.2012 on the basis of his last drawn wages is perfectly correct, as G.O.362 dated 05.10.2012 was not in existence on the said date. Hence, the finding of the Authority in rejecting the Approval Petition on the ground that there is shortage of amount in respect of one month wages, cannot be accepted.

5. In view of the above findings, the Writ Petition stands allowed. The impugned order passed by the 2nd respondent/Authority dated 12.10.2015 in A.P.No.257 of 2012, is set aside. It is open to the Management to file a petition for appropriate relief, as against the order of dismissal of approval petition and raise all the grounds. It is needless to mention that the period during which the writ petition is pending needs to be excluded from the date of filing the petition till the copy of the order is made ready for the purpose of computation of limitation period. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Special Deputy Commissioner of
Labour
D.M.S.Compound
Chennai-6

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+1cc to Mr.K.J.Sivakumar, Advocate SR.72213
+1cc to Mr.R.Muralidharan, Advocate SR.71991

WP.364 of 2017

BS (CO)
CB(01/11/2019)



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