

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.2776 of 2018
and
CMP.No.23022 of 2018
and
CMP.Nos.3176 & 3179 of 2019

The Management
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Illam
Anna Salai
Chennai - 600 002. Appellant / Petitioner

Vs.

1.K.Srinivasan
2.The Special Deputy Commissioner Labour
D.M.S. Office
Teynampet
Chennai - 600 006. Respondents / Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 28.08.2018 passed in W.P.No.11801 of 2016. सत्यमेव जयते

Prayer in W.P.No.11801 of 2016 :- Petition filed Under Article 226 of the Constitution of India praying to issue of Writ of Certiorari, Calling for the records pertaining to the order passed in A.P.No.425 of 2011 dated 23.05.2014 on the file of the 2nd respondent and quash the same.

For Appellant : Ms.Rajeni Ramadass

For Respondents: Mr.S.Varadarajulu [for R1]
Mr.R.P.Prathap Singh
Government Advocate [for R2]

JUDGMENT

(Judgment of the Court delivered by T.S.Sivagnanam, J.)

This appeal preferred by the Management of Metropolitan Transport Corporation (Chennai) Limited is directed against the order passed in W.P. No.11801 of 2016 dated 28.08.2018. The said writ petition was filed by the appellant-Transport Corporation, challenging the order passed by the second respondent in A.P.No.425 of 2011 dated 23.05.2014, whereby the second respondent rejected the approval petition filed by the management on the ground that there is a deficit in payment of one month wages to the first respondent.

2. The first respondent was working as a driver on temporary basis in the appellant-Corporation and he absented from duty without availing any leave and without submitting any leave letter for over 300 days. A charge memo was issued to the first respondent and a domestic enquiry was conducted, in which it appears that the first respondent has accepted that he was absent from his duty, but pleaded ill-health. The Enquiry Officer vide his report dated 29.12.2010, has held that the charges framed against the first respondent are proved, and pursuant to which, an order of discharge from service was passed on 22.06.2011. Since the dispute regarding wage settlement was pending before the Labour Court, the Management had to seek approval from the second respondent in terms of Section 32(2) of the Industrial Disputes Act 1947 and accordingly, a petition was filed before the second respondent on 28.10.2011, and the same was taken on file as A.P.No.425 of 2011.

3. The first respondent/workmen had filed counter affidavit contending that, one month wages was not paid as per mandatory requirement under the Act and that apart, he also contested the merits of the order of discharge of service.

4. The Management as well as the workmen have placed documents before the second respondent, who by an order dated 23.05.2014, rejected the approval petition. The legal position is that once the approval petition is rejected, the workmen is deemed to continue in service. The appellant-Corporation filed W.P.No.11801 of 2016, challenging the rejection of approval petition in A.P.No.425 of 2011 and the said writ petition was dismissed vide the impugned order and this is how, the appellant-Corporation is before this Court by way of this appeal.

5. Heard Ms.Rajeni Ramadass, learned counsel for the appellant, Mr.S.T.Varadarajulu, learned counsel appearing for the first respondent and Mr.R.P.Prathap Singh, learned Government Advocate appearing for the second respondent.

6. The second respondent in his order dated 23.05.2011, while rejecting the approval petition has given a categorical finding that the one month wages has not been paid. The contention initially advanced by the workmen was that his one day wage is Rs.419/- and therefore, his monthly salary will be Rs.12,570/-, but he was paid only a sum of Rs.5,980/- for 26 days, calculated at the rate of Rs.230/- per day and hence, there is a deficit of Rs.6,590/- Further, it is stated that the basic pay for the driver is Rs.5200-20200 and that he is also eligible for Dearness Allowance at the rate of 58% and if the same is taken into consideration, his monthly salary will be Rs.8,216/-, calculating his per day salary at the rate of Rs.316/- (inclusive of Dearness Allowance).

7. The appellant-Management was not able to produce documents before the second respondent to disprove the claim made by the first respondent. Secondly, the second respondent has recorded a categorical finding that there is denial of payment of full one month salary to the workmen. This order was by the Writ Court vide the impugned order. The learned Writ Court in the impugned order has also directed payment of wages to the workmen/first respondent under Section 17-B of the Industrial Disputes Act, from the date of filing of the writ petition till the date of reinstatement.

8. We find no error in the decision making process by the second respondent since the findings of the facts are clear, consequently the appellant has not made out any case for interference with the order passed in the writ petition.

9. Considering the fact that the first respondent-workmen was only a daily wager and not a permanent employee of the appellant-Management, we are of the view that ends of justice would be met if the first respondent is reinstated as a fresh entrant coupled with payment of wages under Section-17B, as ordered by the Writ Court from the date of writ petition till the date of reinstatement as fresh entrant.

10. Accordingly, the writ appeal is partly allowed and the order passed in the writ petition is slightly modified by directing the appellant-Management to offer employment to the first respondent as a fresh entrant preferably as a regular employee, subject to the availability of vacancy and other parameters and the said process shall be implemented within a period of six weeks from the date of receipt of a copy of this judgment. The appellant-Management is also directed to pay the first respondent Section 17-B wages as ordered by the Writ Court, within a period of six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Special Deputy Commissioner Labour
D.M.S. Office
Teynampet
Chennai - 600 006.

+lcc to Mr.S.T.Varadarajulu, Advocate, Sr.No.10400/19.

W.A.No.2776 of 2018

Kak (15/03/2019)

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