



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.[MD]No.1287 of 2019
and
C.M.P.[MD]No.10984 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation,
[Madurai] Ltd.,
Bye Pass Road, Madurai -16.

: Appellant/Respondent

Vs.

V.Muthuvel

: Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order in W.P.[MD]No.9958 of 2018 dated 23.10.2018, on the file of this Court.

Prayer in WP(MD). 9958/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to settle the benefits with continuity of service from the date of dismissal on 03.11.2012. Till the date of reinstatement on 30.11.2017 and to settle the arrears of wages from the date of Labour Court Award on 14.12.2017 till the date of reinstatement as order by the Labour Court in ID No.92/2015 dated 14.02.2017 along with interest.

For Appellant : Mr.J.Senthil Kumariah
Standing Counsel
For Respondent : Mr.M.Pounraj

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

By consent, the Writ Appeal is taken up for final disposal at the admission stage itself.

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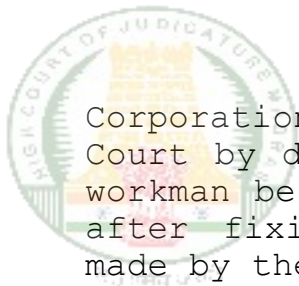
2.Heard Mr.J.Senthil Kumariah, learned Standing Counsel appearing on behalf of the appellant and Mr.M.Pounraj, learned Counsel accepting notice on behalf of the respondent / caveator.

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3.This appeal is by the Managing Director, Tamil Nadu State Transport Corporation, Madurai Limited, challenging the order in W.P.[MD]No.9958 of 2018 dated 23.10.2018. The respondent filed the writ petition after having had the benefit of award of reinstatement passed by the Labour Court, Madurai in I.D.No.92 of 2015 dated 14.02.2017. By the said award, the Labour Court directed reinstatement of the respondent workman with continuity of service but without backwages. Since the benefits were not settled and appropriate salary was not paid, the respondent workman approached the writ Court by way of the said writ petition and sought for a direction upon the appellants to settle the benefits from the date of dismissal on 03.11.2012 till the date of reinstatement on 30.11.2017 and settle the arrears of wages from the date of the award of the Labour Court dated 14.02.2017, till the date of reinstatement. Writ petition has been allowed to the extent indicated by the learned Single Bench in paragraph No.6 of the impugned order. For better appreciation, we quote the said paragraph:

"6.In view of the above reasonings, the entire service will have to be taken into account for the purpose of calculating terminal benefits like gratuity and other arrears shall be paid within a period of two months from the date of receipt of a copy of this order. The petitioner is also entitled to get interest on the gratuity amount at the rate of 10% per annum from the date of retirement and the terminal benefits would fetch interest at the rate of 6% per annum. This Court makes it very clear that if the above said amount is not paid within the time stipulated by this Court as stated supra, interest payable to the petitioner shall be recovered from the salary of the official, who is responsible to disburse the said amount. Hence, taking note of the judgment of the Honourable Apex Court in Central Co-operative Consumers Store Limited Vs. Labour Court, Himachal Pradesh at Shimla and another reported in AIR 1994 SC 23, respondent / Corporation will have to pay the above said amount at the first instance and then to recover the same from the official concerned."

4.The appellant's contention is that the rate of interest fixed by the learned Single Bench is incorrect and if at all interest is payable, it shall be not exceeding 8.5%. Further, the appellant



Corporation is aggrieved by a direction issued by the learned Writ Court by directing the interest which is payable to the respondent workman be recovered from the official of the appellant Corporation after fixing the responsibility. Further, the other observations made by the learned Writ Court is also put to challenge.

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5. In our considered view, the award of the Labour Court having attained finality, the appellant Corporation cannot start a fresh litigation and seek to reopen settled issues. The Labour Court having permitted for reinstatement with continuity of service, it goes without saying that the service benefits which shall accrue to the respondent workman on account of the order of reinstatement with continuity of service should be extended. What has been denied to the respondent workman is the financial benefit or the salary for the period during which he had not worked. Thus, the fixation of the wages payable to the respondent workman should be done upon his reinstatement by treating him as if he has been in service but however, for the period he has not worked, no monetary benefits will be paid. This is the proper understanding of the award of the Labour Court.

6. So far as the interest is concerned, at the relevant point of time, the interest payable was 8.5%. Though it is argued that interest shall be paid at 10%, considering the litigation which was involved in the matter and the claim petition was pending before the Labour Court from the year 2015 onwards and after the order of the Labour Court was passed, the respondent workman was reinstated on 30.11.2017, we are of the view that the award of interest at 8.5% will meet the ends of justice. Considering the financial situation of the appellant corporation, we are of the view that the responsibility need not be fixed on the official because the transport Corporations are unable to settle even the retirement benefits of the workmen who have regularly retired and the amount is disbursed in installment. With regard to the other findings rendered by the learned Writ Court, we find that the appellant has not made out any ground to interfere in the order passed by the writ Court.

7. Accordingly, the Writ Appeal is partly allowed and the order and direction issued by the learned Writ Court in paragraph No.6 is modified by directing payment of interest at the rate of 8.5%. The direction issued to the appellant to recover the interest payable from the official is set aside. Learned Counsel on instructions submitted that though in earlier cases, the appellant Corporation sought for permission to pay the arrears in 12 equal installments, in the instant case, the appellant Corporation will settle the same in six [6] equal monthly installments. This submission made on behalf of the appellant Corporation is placed on record and the arrears / entitlement shall be disbursed to the respondent workman in six [6] equal monthly installments. First of such installment shall be payable on or before 16th December 2019 and the subsequent installments shall be payable on or before 16th of every succeeding English Calendar. However,



there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

MR

+1 CC to Mr.M. POUNRAJ, Advocate (SR-99718[F] dated 20/11/2019)

+1 CC to Mr.J.SENTHIL KUMARAIAH, Advocate (SR-100510[F] dated 22/11/2019)

Judgment made in

W.A. [MD]No.1287 of 2019

Dated: **20.11.2019**

VB(05.12.2019) 4P 3C