

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.17797 of 2010

and

M.P.No.1 of 2010

1. A.Swaminathan (Died)
2. A.Thanikachalam
3. A.Venkatesan
4. A.Gopalakrishnan
5. S.Karunambigai
6. A.Varalakshmi Petitioners

(Petitioners 2 to 6 substituted as L.Rs. in the place of the deceased Petitioner, as per order dated 26.03.2014 in M.P.No.1 of 2014 in W.P.No.17797 of 2010)

vs.

The Management,
The Tamil Nadu State Transport
Corporation (Salem Division II) Limited,
Bharathipuram, Salem Main Road,
Dharmapuri - 636 705. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent to reinstate the petitioner in service and pay full backwages and all other attendant benefits with continuity of service within a time frame that may be fixed by this Court.

For Petitioners : Mr.J.Saravana Vel

For Respondent : Mr.D.Raghu

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O R D E R

Originally, the 1st Petitioner herein filed the present Writ Petition seeking a direction to the Respondent to reinstate him in service and pay full backwages and all other attendant benefits with continuity of service. As the original Petitioner viz. A.Swaminathan died during the pendency of the Writ Petition, his legal heirs were brought on record as Petitioners

2 to 6 by an order of this Court dated 26.03.2014 in M.P.No.1 of 2014 in the above Writ Petition.

2. The case of the original Petitioner is that, he was working as a Conductor in the Respondent Corporation since 1989 and while he was working in Tirupattur Branch, he was dismissed from service by the Respondent vide order dated 01.07.2003 on the charge of unauthorized absence. The Respondent sought approval of the original Petitioner's dismissal from service before the Joint Commissioner of Labour (Conciliation), Chennai in Approval Petition No.255 of 2003 under Section 32(2)(b) of the Industrial Disputes Act, 1947. By an order dated 09.05.2009, the Joint Commissioner of Labour (Conciliation), Chennai refused approval for the dismissal, finding that, no enquiry was conducted by the Respondent prior to the original Petitioner's dismissal from service for the alleged absence from 25.04.2002.

3. Thereafter, the original Petitioner sent a representation dated 11.06.2009 to the Respondent, enclosing a copy of the order passed by the Joint Commissioner of Labour (Conciliation), Chennai, requesting to reinstate him in service with backwages and all attendant benefits. Pending consideration of the said representation, the original Petitioner has approached this Court by way of the present Writ Petition.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. It is represented by the learned counsel appearing for the Respondent/Transport Corporation that, the Management challenged the order passed in Approval Petition No.255 of 2003 in W.P.No.7981 of 2011 and that, the said Writ Petition was dismissed on 25.02.2019. He further submitted that, as the order passed in Approval Petition became final, the original Petitioner is deemed to have been in service, ever since his dismissal from service and that, the Management has written a letter to the legal heirs of the deceased Petitioner to collect the monetary benefits due to the deceased employee.

6. Though there is an alternative remedy available under Section 33C(1) of the Industrial Disputes Act, 1947 to claim monetary benefits based on the last drawn wages, by filing a Petition under Section 33C(2) of the said Act before the appropriate Labour forum, taking note of the decision rendered by the Apex Court in the case of Managing Director, Tamil Nadu State Transport Corporation vs. Neethivilangan, Kumbakonam (Appeal (Civil) No.3593 of 2001, judgment dated 04.05.2001), this Court can issue a mandamus for implementation of the order

of the Authority.

7. Since the original Petitioner is no more, relegating his legal heirs to approach the Labour forum for disbursement of monetary benefits due to the deceased employee would make them wait for one more decade, as the present Writ Petition is of the year 2010.

8. Learned counsel appearing for the Respondent/Transport Corporation fairly submitted that, the Management is willing to settle the monetary benefits due to the deceased Petitioner within the time stipulated by this Court.

9. Having regard to the submissions made by the learned counsel on either side, this Court directs the Respondent herein to settle all the benefits due to the deceased Petitioner to all his legal heirs, in equal proportion, as the deceased is a Hindu male, in order to avoid further litigation on the amount payable to his legal heirs. The said exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

This Writ Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

(aeb/jas)

To:

The Management,
The Tamil Nadu State Transport
Corporation (Salem Division II) Limited,
Bharathipuram, Salem Main Road,
Dharmapuri - 636 705.

+1cc to Mr.J.Saravanavel, Advocate, S.R.No. 25811

+1cc to Mr.D.Raghu, Advocate, S.R.No. 25718

W.P.No.17797 of 2010

and

M.P.No.1 of 2010

LN(CO)
GN(08/10/2020)