

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2409 of 2021

B.Amsaveni

... Petitioner

-vs-

1. The Managing Director,
State Express Transport Corporation,
(Tamilnadu) Ltd.,
Pallavan Salai, Chennai-600 002.
2. The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Pallavan Salai, Chennai-600 002. ... Respondents

Prayer: Petition is filed under Article 226 of Constitution of India to issue a Writ of Mandamus to direct the Respondents to pay backwages from 14.10.2004 to the date of death of the petitioner's husband i.e., on 31.08.2019 and Family Pension and other terminal benefits to her.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents: Mr.K.Kathiresan

O R D E R

The petitioner has filed this writ petition seeking a direction to the Respondents to pay back wages from 14.10.2004 to the date of death of the petitioner's husband i.e., on 31.08.2019 and Family Pension and other terminal benefits to her.

2.The petitioner's husband viz., P.Balakrishnan was the Driver in the first respondent-State Express Transport Corporation Limited. As he was absented for duty from 22.05.2003 without permission, a charge sheet was issued on 06.06.2003. An ex-parte enquiry was conducted and based on Report of the Enquiry Officer, he was dismissed from service on 14.10.2004. The first respondent has filed an Approval Petition No.286 of 2004 before the Joint Commissioner of Labour seeking approval for the dismissal under Section 33(2) (B) of the Industrial Disputes Act, 1947, in which, the Joint Commissioner of Labour has rejected the request of the first respondent. Challenging the said order, W.P.No.10101 of 2008 has been filed by the first respondent which was also

dismissed on 07.06.2012 confirming the order of the Joint Commissioner of Labour. The request of the petitioner's husband for terminal benefits has been denied. In the mean time, the petitioner's husband died on 31.08.2019. As the terminal benefits of the petitioner's husband have not been settled, she is before this Court.

3. In the decision reported in 1950 Labour Law Journal 1043 (The Tata Iron And Steel Co., Ltd. vs G. Ramakrishna Ayyar), a Division Bench of this Court has held that once the order of termination is set aside, it is more than an award of reinstatement and that the employee is deemed to be in service and the original order of the employer also disappears and it is as if the order is non-est in law. Even though the aforesaid decision has been rendered by a Division Bench of this Court in reference to Section 41(1) of the Madras Shops and Establishments Act, 1947, the principle laid down therein is applicable to the cases where the employer's approval application filed under Section 33(2)(b) of the Industrial Disputes Act is rejected.

4. The main contention of the learned counsel for the petitioner is that the question of employee not reporting for work during the relevant point of time does not arise, as he was deemed to be in service pursuant to the rejection of approval petition and the employee is entitled to all the backwages, as if he was in service including continuity of service and all other consequential benefits.

5. I find much force in the contention of the learned counsel for the petitioner, inasmuch as the termination of the petitioner came to an end after the orders of the Joint Commissioner of Labour and the same has been confirmed by this Court. Accordingly, the writ petition is allowed. A direction is issued to the respondents to fix wages notionally with all benefits including the terminal benefits. It is made clear that if the said benefits payable to the petitioner's husband (since deceased) are not extended to the petitioner within a period of three months from the date of receipt of a copy of this order, the backwages and terminal benefits including family pension, if any, will have to be paid to the petitioner with interest at 6% per annum. The entire arrears with interest from the date of the death of the employee viz., 31.08.2019 shall be paid to the petitioner by the first respondent. If the amount is not paid to the petitioner within a period of three months from the date of the receipt of the copy of this order, the first respondent- Managing Director, State Express Transport Corporation (Tamil Nadu) Limited, Chennai, shall not draw the salary till the remittance of amount to the petitioner. In case any contempt petition is moved, order of attachment of his property will be passed in the light of the judgment of this Court in A.Sachidanandam Macneil and Magor Kilburn Group Companies Employees' Union, Rep. By its General Secretary Vs. S. Srinivasan & Others (2011 (6) CTC 844), which was duly

confirmed by the Apex Court in S.L.P.(Civil) No.34244 of 2011 on 13.12.2011.

6.If the employee comes within the Contributory Pension Scheme, the contribution payable shall be deducted from the arrears and remitted. If there is any dispute with regard to calculation and payment of wages, it is open to the petitioner to invoke Section 33(C)(2) of the Industrial Disputes Act, 1947. In case of admitted wages based on the last drawn wages, it is open to the petitioner to file an application under Section 33(C)(1) of the Industrial Disputes Act, 1947 or such other provision under the Act, in view of the ratio laid down by the Apex Court in the case of Fabril Gasosa Vs. Labour Commissioner (1997 (3) Supreme Court Cases 150). No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
State Express Transport Corporation,
(Tamilnadu) Ltd.,
Pallavan Salai, Chennai-600 002.
2. The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Pallavan Salai, Chennai-600 002.

+1cc to Mr.S.T.Varadarajulu , Advocate SR.No. 17197

A.SK(20.04.2021)

सत्यमेव जयते

W.P.No.2409 of 2021

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