



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.12792 of 2006

The Management,
Tamilnadu State Transport Corporation
(Coimbatore Division - II) Ltd.,
Chennimalai Road,
Erode - 638 001.

... Petitioner

vs.

1. P.Murugesan (deceased)
2. The Presiding Officer,
Joint Commissioner of Labour,
(Conciliation) Chennai.
3. Annakkodi
4. Vinoth Kanna
5. Dhineshkumar

... Respondents

(R3 to R5 are substituted as L.Rs. of the deceased R1, vide order dated 22.03.2019 made in W.M.P.No.24090 of 2018 in W.P.No.12792 of 2006)

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records from the 2nd Respondent in Approval Petition No.80 of 2004, dated 12.02.2005 and quash the same.

For Petitioner : Mr.A.Sundaravadanam
For Respondents 3 to 5 : Mr.Ajoy Khose

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 12.02.2005 passed by the 2nd Respondent/Labour Court in I.D.No.80 of 2004.

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

3. It is seen that, the Authority has rejected the



Petitioner's Approval Petition on the ground that, the document not relied upon during the enquiry proceedings, has been relied upon behind the back of the employee. This Court is in agreement with the contention of the Petitioner/Transport Corporation, as, in the light of the decision of the Apex Court in the case of John D' Souza vs. Karnataka State Road Transport Corporation reported in (2019) 18 SCC 47, the employer is empowered to let in evidence, provided there is a plea by the employer seeking to establish the charges.

4. In the case on hand, the employer came to the conclusion based on documents, which were not marked in the enquiry. The employee died on 04.01.2018 during the pendency of the present Writ Petition. The employee has received 50% of the backwages together with interest. Learned counsel representing Respondents 3 to 5 submitted that, the legal heirs of the deceased employee are willing to give up the remaining backwages, so that, they may get family pension. The employee had the benefit of the order in the Approval Petition. Now, the matter cannot be sent back to establish the charges, as the employee is no more.

5. Taking note of the submissions of the learned counsel appearing for Respondents 3 to 5/legal heirs of the deceased employee, backwages to an extent of 50% is deprived and in view of the same, the legal heirs/dependents of the deceased employee are eligible to get family pension from the date of demise of the employee. Provident Fund and Gratuity due to the deceased employee shall be paid to his legal heirs within a period of four months from the date of receipt of a copy of this order.

6. It is made clear that, in order to get better family pension, since 50% of the backwages of the deceased employee have been given up, the Provident Fund Contribution by the employer shall be paid from and out of the remaining terminal benefits that are going to be extended to the family members of the deceased employee. Remaining amount, if any, lying in deposit shall be withdrawn by the employer. It is further made clear that, the Provident Fund contribution shall be deposited to the Provident Fund Trust, without interest.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected W.P.M.P.No.1001 of 2009 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



(aeb)

To:

The Presiding Officer,
Joint Commissioner of Labour,
(Conciliation) Chennai.

+1cc to Mr.Ajoy Khose, Advocate, S.R.No.36765

W.P.No.12792 of 2006

SSV(CO)
CT/12/10/2021