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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.21294 of 2006

and

W.P.No.5701 of 2009

W.P.No.21294 of 2006 :

The Management
Tamilnadu State Transport Corporation
Coimbatore Division-1, Ltd.,
No.37, Mettupalayam Road,
Coimbatore 641 043.

... Petitioner

vs.

1. C.Sitrambalam (Deceased)
2. The Presiding Officer
Joint Commissioner of Labour (Conciliation)
Chennai.
3. Mailammal
4. Uma Kalyani
5. Arun Prasath

... Respondents

(R3 to R5 substituted as L.Rs. of deceased R1, as per order dated 02.06.2020 made in W.M.P.No.8020 of 2020 in W.P.No.21294 of 2006)

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the 2nd Respondent in his order dated 06.01.2006 made in A.P.No.35 of 2004, and quash the same.

For Petitioner : Mr.A.Sundaravadanan
For Respondents 3 to 4 : Mr.A.Amalraj

W.P.No.5701 of 2009:

1. C.Sitrambalam (deceased)
2. C.Maillammal
3. C.Umakalyani
4. C.Arunprasath

... Petitioners

(P2 to P4 substituted as L.Rs. of deceased P1, as per order dated 30.08.2019 in W.M.P.No.23237 of 2019 in W.P.No.5701 of 2009)

vs.



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1. The Management,
Tamilnadu State Transport Corporation
Coimbatore Division No.I Ltd,
No.37, Mettupalayam Road,
Coimbatore 641 043.
2. The Presiding Officer,
Joint Commissioner of Labour (Conciliation)
Chennai. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the Respondents, especially the 2nd Respondent relating to his proceedings made in Approval Petition No.35 of 2004, dated 06.01.2006 and quash the same only insofar as the findings regarding Issue Nos.1, 2 and 3, viz. Whether a proper domestic enquiry (2) Whether a prima-facie case for dismissal and (3) whether the employer had come to a bonafide conclusion and consequently ordering for the Petitioner's reinstatement with backwages together with allowance entitled to by him with effect from 12.11.2003 permitting for his peaceful retirement from May 2004 on superannuation with all attendant benefits inclusive of full pensionary benefits.

For Petitioners : Mr.A.Amalraj
For 1st Respondent : Mr.A.Sundaravadanan

C O M M O N O R D E R

Challenging the order dated 06.01.2006 passed by the Authority in Approval Petition No.35 of 2004, the Management has come up with W.P.No.21294 of 2006 and the employee has come up with W.P.No.5701 of 2009.

2. As the issue involved in both cases is one and the same, Writ Petitions are taken up for disposal by a common order.

3. Learned counsel appearing for the Transport Corporation contended that, the decision taken by the Authority is beyond his scope and it is not in consonance with the guidelines framed by the Apex Court in the decision rendered in the case of Lalla Ram vs. Management of D.C.M. Chemical Works Ltd. reported in AIR



1978 SC 1004 and the scope of the Approval Petition is very limited. In case, the domestic enquiry is held to be bad, the Authority will have to give an opportunity to the employer to establish the charges against the employee. According to the learned counsel, the employer has complied with all the provisions of the Act and the findings questioned by the employee in the Writ Petition cannot stand in the eye of law and it has to be adjudicated by raising an Industrial Dispute. He went on to state that, the employee was dismissed from service on 12.11.2003; attained superannuation in May 2004 and died on 25.07.2019, during the pendency of this Writ Petition. It is further stated by the learned counsel that, the Management has paid one month wages to the employee and the Authority has also observed the same in the order passed in the Approval Petition. Hence, according to the learned counsel, the relief sought for by the employee cannot be granted.

4. Even in the counter filed by the employee before the Authority, he has not stated that, there is shortfall in the payment of one month wages.

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

6. It is no doubt true that, the employee was paid arrears of Dearness Allowance. Subsequent to the date of dismissal of the employee, Dearness Allowance came into force retrospectively. The employer may not be aware as to when the revision will come into effect and what would be the revision. As there is no shortfall in the payment of one month wages to the employee, which has not been objected by the employee in the counter statement before the Authority, this Court finds prima facie case in the contention of the learned counsel appearing for the Transport Corporation.

7. As the employee is no more, his legal heirs have to be paid the terminal benefits, i.e. Provident Fund, Gratuity, etc., from the date of dismissal of the employee till his death, within a period of four months from the date of receipt of a copy of this order. Family pension has to be extended to the eligible member of the family from the date of demise of the employee.



In fine, W.P.No.21294 of 2006 filed by the Transport Corporation is allowed and W.P.No.5701 of 2009 filed by the employee is dismissed. No costs.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Management
Tamilnadu State Transport Corporation
(Coimbatore Division-1, Ltd.,
No.37, Mettupalayam Road,
Coimbatore 641 043.
2. The Presiding Officer
Joint Commissioner of Labour (Conciliation),
Chennai.

+1CC to Mr.V.Udayakumar, Advocate, Sr.No.36975
+1CC to Mr.A.Amalraj, Advocate, Sr.No.36913

W.P.No.21294 of 2006
and
W.P.No.5701 of 2009

RSI (CO)
K.RK. (26.10.2021)