

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.23214 of 2004

V.Thulasi

... Petitioner

-Vs-

Tamilnadu State Transport Corporation
(Villupuram Division-III) Limited
rep.by its General Manager
Kancheepuram.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order in Proceedings No.3307/P2, TNSTC (Villupuram Div-III)/2000 dated 05.10.2000 and the order in Proceedings No.3307/P2/TNSTC (Villupuram Div-III)/2000 dated 19.09.2001 passed by the respondent, quash the same and consequently direct the respondent to pay the petitioner the wages, death benefits, terminal benefits including pension of the petitioner's husband and also to provide compassionate appointment to the petitioner's son V.Senthil Kumar.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.C.S.K.Sathish,
Standing Counsel

सत्यमेव जयते
O R D E R

The prayer sought for herein is to call for the records relating to the order in Proceedings No.3307/P2, TNSTC (Villupuram Div-III)/2000 dated 05.10.2000 and the order in Proceedings No.3307/P2/TNSTC (Villupuram Div-III)/2000 dated 19.09.2001 passed by the respondent, quash the same and consequently direct the respondent to pay the petitioner the wages, death benefits, terminal benefits including pension of the petitioner's husband and also to provide compassionate appointment to the petitioner's son V.Senthil Kumar.

2. The petitioner's husband was appointed as Driver at the respondent Corporation and he was working in that capacity for

some years. However, after some point of time, in the year 2000, he became sick and therefore he was referred to the Medical Board to assess his physical fitness to continue his job as Driver in the respondent Corporation. In this regard, the Medical Board, after examining the petitioner's husband had opined that, he presently was not fit to work as Driver and he may be considered for other alternative jobs.

3. Despite the said recommendation given by the Medical Board, by an order dated 05.10.2010 the respondent discharged the petitioner's husband from duty. However, thereafter by proceedings dated 29.03.2001, the petitioner's husband was re-appointed as Non-Tech Helper as fresh entrant and it seems, he had been working continuously. However, suddenly or abruptly, by the impugned order dated 19.09.2001, the respondent terminated the services of the petitioner's husband.

4. Thereafter, the petitioner's husband died on 10.02.2004. Therefore, after his death, the petitioner sent representations to the respondent Corporation on various dates and lastly on 18.07.2004 explaining the above position and seeking for D.C.R.G., and other benefits payable to her husband. Since nothing has come and no orders have been passed, she has chosen to challenge the termination order passed against her husband and consequential relief, by filing the present writ petition with the aforesaid prayer.

5. Heard Mr.S.Ramesh, learned counsel for the petitioner, who has reiterated the aforesaid facts and seeks the indulgence of this Court.

6. Heard Mr.C.S.K.Sathish, learned Standing Counsel for the respondent Corporation, who would submit that, in view of the medical inability or report submitted by the Medical Board, the petitioner's husband was discharged from duty. Subsequently, he was re-appointed as Non-Tech Helper and even in that post he was not considered to be fit and therefore, he was terminated from service on 19.09.2001. since he was terminated as early as in 2001 and he subsequently died, he is not entitled for any D.C.R.G., or retiral benefits, as the service rendered by him was only for a short period, which cannot be taken into account for the purpose of D.C.R.G., for regular employees. Therefore, the said request made by the petitioner to get the benefits of the deceased employee cannot be considered and hence the writ petition deserves to be dismissed, he contended.

7. I have considered the rival submissions made by the learned counsel appearing for the petitioner and the learned Standing Counsel for the respondent and also perused the materials placed on record.

8. The petitioner's husband was appointed as Driver in the respondent Corporation and in that capacity, he was working from 1987 onwards and in the year 2000, since he was found medically unfit to be a driver in the respondent Corporation, the Medical Board, even though had made a recommendation for considering him for alternative job, he was not considered immediately. However, only on 29.03.2001, he was given the job of Non-Tech Helper as fresh entrant.

9. The said appointment as Non-Tech Helper cannot be treated as a fresh appointment in view of the provisions of the Act and therefore, it shall be only treated as continuous employment or as alternative employment. However, even in the said alternative employment of Non-Tech Helper, he was not permitted to continue and within a span of six months ie., from 29.03.2001 to 19.09.2001, he was permitted to do the said job and on 19.09.2001, he was abruptly terminated by the impugned order of the respondent.

10. Absolutely no reason has been stated in the said order of termination. Subsequently, in the year 2004, the employee died. Thereafter, with the death certificate and legal heir certificate, the petitioner, who is the wife of the deceased employee had given representation dated 18.07.2004. Even that was not considered for disbursement of D.C.R.G., and other benefits.

11. If we look at the the termination order dated 19.09.2001, absolutely no reason has been given, except to quote Clause (2) of the earlier order dated 29.03.2001. Though the said order was not produced before this Court, whatever be the reasons stated, no termination can be made against the employee abruptly without taking any disciplinary action.

12. Moreover, the past services rendered by the petitioner's husband for nearly 13 years from 1987 to 2000 also has not been taken into account. If this period also were taken into account along with the subsequent alternative employment as Non-Tech Helper, certainly the deceased employee would be entitled to get the benefits, taking his services from 1987 to 2004, till his death.

13. Without taking into account the total service rendered by the petitioner's husband since the petitioner's husband was removed from service without any reason, this Court feels that, the way in which the petitioner's husband was sent out from the respondent Corporation is not in consonance with the legal principles and therefore, this Court feels that, the deceased employee is entitled to get the benefits. Accordingly, on his

behalf, after his death, the present petitioner, who is the wife of the deceased employee, is entitled to get the same benefits.

14. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

That the order of discharge or termination made against the petitioner's husband dated 05.10.2000 and 19.09.2001 shall not stand in the way for considering the request of the petitioner dated 18.07.2004 and accordingly, by considering the same, the respondent shall include the total service rendered by the petitioner's husband either as Driver or Non-Tech Helper from 1987 till his death in the year 2004 and accordingly whatever be the D.C.R.G., and other pensionary benefits of the petitioner's husband shall be calculated and be paid to the petitioner.

15. The needful as indicated above shall be undertaken within a period of three months from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

KST

To

The General Manager,
Tamilnadu State Transport Corporation,
(Villupuram Division-III) Limited.,
Kancheepuram.

+1cc to M/s.S.Ramesh, Advocate SR.12700

+1cc to M/s.C.S.K.Sathish, Advocate Sr.13346

W.P.No.23214 of 2004

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