



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.25350 of 2013

The Management,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam Limited,
Trichy.

... Petitioner

Vs.

1.S.Marimuthu

2.The Assistant Commissioner of Labour (Conciliation),
D.M.S. Compound,
Chennai 600 006.

... Respondents

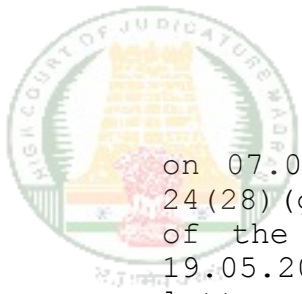
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records of the 2nd Respondent made in Approval Petition No.235 of 2010, dated 27.12.2012 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner	:	Mr.D.Venkatachalam
For 1 st Respondent	:	Mr.S.T.Varadarajulu
For 2 nd Respondent	:	Mr.L.S.M.Hasan Fizal, Government Advocate

O R D E R

Petitioner/Management has come up with this Writ Petition challenging the order dated 27.12.2012 passed by the 2nd Respondent in Approval Petition No.235 of 2010.

2. According to the Petitioner/Management, the 1st Respondent was appointed as Driver in their Transport Corporation on 23.06.1985. On 06.05.2008, the 1st Respondent, while performing his duty in the vehicle bearing Registration No.TN 45/N 2184 plying in the route from Trichy to Velankanni, caused an accident, due to which, a cyclist who came in the opposite direction, sustained injuries and died in the hospital



on 07.05.2008. In respect of the said misconduct under clauses 24(28)(g), 24(27)(h) and 24(40) of the Certified Standing Orders of the Petitioner Transport Corporation, a Charge Memo dated 19.05.2008 was sent to the 1st Respondent through RPAD, and the latter sent his explanation to the same on 09.06.2008. A domestic enquiry was ordered to be conducted and the Enquiry Officer in his findings dated 10.04.2009 held that, the charges against the 1st Respondent were proved. Thereafter, a Show Cause Notice dated 27.03.2010 proposing the punishment of dismissal was issued to the 1st Respondent and by an order dated 13.12.2010, he was dismissed from service.

3. It is further stated by the Petitioner/Management that, the 1st Respondent was paid a sum of Rs.16,242/- as one-month wages vide cheque bearing No.957713, dated 13.12.2010 payable at Trichy. Since the bonus dispute was pending at the time of dismissal, the Petitioner/Management filed an Approval Petition in A.P.No.235 of 2010 before the Commissioner of Labour, Chennai under Section 33(2)(b) of the Industrial Disputes Act, 1947. Thereafter, a Cheque bearing No.986592, dated 12.09.2011 for a sum of Rs.2,144/- towards difference of wages due to the enhancement of the Dearness Allowance was paid on 29.09.2011. However, the Approval Petition was dismissed by an order dated 27.12.2012 on the grounds that, (i) there was no payment of one month salary and (ii) the prima facie case for dismissal based on legal evidence adduced before the domestic enquiry was not made out. Aggrieved by the said order, the Petitioner is before this Court.

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

5. According to the Petitioner/Management, the last drawn wages of the 1st Respondent/employee have been correctly paid, which works out to Rs.16,242.33 and that, the 1st Respondent/employee has produced the wage slip of November 2010, showing that, a sum of Rs.17,295.89 has been paid as salary. On the ground that, one month wages have not been correctly paid, the Petitioner's Approval Petition was rejected.

6. Today, learned counsel for the Petitioner/Management produced a comparative statement of the Pay Slips issued to the 1st Respondent/employee for the months, November 2010 and December 2010 vide the Petitioner's communication dated 19.06.2021. On a perusal of the same, it is clear that, for November 2010, the 1st Respondent was paid Festival Advance of Rs.522.91 and a sum of Rs.509.65 towards arrears of Dearness Allowance. But, it cannot be construed that, the 1st Respondent/employee will be entitled to Festival Allowance from November 2010. However, it has been pointed out that, there is



a shortfall of Rs.21/-. It is stated by the Petitioner/Management that, Medical Allowance of Rs.21/- has been given during the Festival period.

7. When the matter was earlier taken up for hearing, it was represented by the learned counsel for the 1st Respondent/employee that, the 1st Respondent is willing to give up backwages and that, he may be paid pensionary benefits and that, he is willing to contribute for the pensionary benefits from the date of his dismissal till date, so that, arrears of pension can be paid from the date of his superannuation.

8. When the explanation given by the Petitioner/Management appears to be correct and that, there can be another interpretation that, there is a slight shortfall in the payment of wages, not with regard to reduction of Dearness Allowance/Festival Allowance, but, with regard to Medical Allowance, which has not been categorically stated before the Authority concerned, and when the employee has filed an Affidavit that, he will give up backwages and has verbally made a statement that, it would suffice if he gets pension from June 2021, so that, he need not contribute from the date of dismissal till date to get the arrears of pension from the date of attaining superannuation, this Court is inclined to modify the order passed by the 2nd Respondent herein.

9. Accordingly, as there is a shortfall in the payment of Medical Allowance to the 1st Respondent/employee, the order dated 27.12.2012 passed by the 2nd Respondent/Authority is interfered with, to the following effect:

(i) As the 1st Respondent/employee has given up backwages and arrears of pension, he shall be paid pensionary benefits from June 2021, taking into account the wages payable to him and the pensionary contribution from the date of dismissal till the date of his superannuation.

(ii) Pensionary benefits shall be payable to the 1st Respondent/employee on par with the other employees, on the same date.

(iii) If there are any arrears of Gratuity, Provident Fund and other terminal benefits, the same shall be paid to the 1st Respondent/employee within a period of four months from the date of receipt of a copy of this order.



The Writ Petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar

WEB COPY

//True Copy//

Sub Assistant Registrar

(aeb)

To:
The Assistant Commissioner of Labour (Conciliation),
D.M.S. Compound,
Chennai 600 006.

+1CC to Mr.D.Venkatachalam, Advocate (SR No.28576)

+1CC to Mr.S.T.Varadarajulu, Advocate (SR No.28701)

+1CC to Government Pleader (SR No.28724)

W.P.No.25350 of 2013

LN (CO)
PR (19/07/2021)