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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.13433 of 2018 and
WMP.No.15828 of 2018

The Management,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai- 600 002.

...Petitioner

-vs-

1. The Presiding Officer,
III Additional Labour Court,
City Civil Court Annexure Building,
High Court Compound,
Chennai- 600 104.

2. Mrs.B.Gowri

3. B.Maheswari

4. B.Vijaya Kumar

(Respondents 2 to 4 are LR's of the deceased
C.G.Bakthavachalam)

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the order passed in I.D.No.641 of 2005 dated 14.02.2018 on the file of the first respondent herein and quash the same.

For Petitioner : Mr.M.Chidambaram

For Respondents: Mr.V.Ajay Khose (R2 to R4)

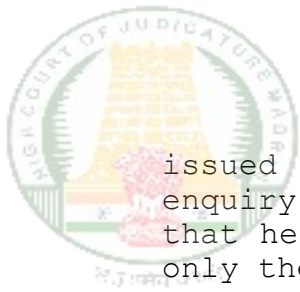
O R D E R

The petitioner has come forward with the present writ petition, challenging the order of the first respondent in I.D.No.641 of 2005 dated 14.02.2018, by which the First Respondent/Labour Court set aside the termination order of the deceased employee Mr.C.G.Bakthavatchalam dated 02.03.2002 and directed the Petitioner-Corporation to pay 25% of the back wages and all other eligible attendant benefits to the deceased employee based on his continuous service from the date of his



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6. Though the petitioner contended that the deceased employee has misappropriated a sum of Rs.1019/-, for which disciplinary proceedings were initiated and he was terminated from service, the deceased employee took a stand before the Labour Court that farce of an enquiry was conducted, without giving opportunity to the employee. Further, the Petitioner-Corporation took a stand before the Labour Court that a sum of Rs.3228/- was handed over to the employee on 25.09.2001 for the purchase of cylinders and after purchasing the same, he failed to remit the balance amount of Rs.1019/- and also failed to report for duty on 26.09.2001 and 27.09.2001. For the said misconduct, he was placed under suspension and a charge memo was



issued calling for explanation and thereafter, detailed domestic enquiry was conducted, in which the deceased employee admitted that he committed misconduct and found guilty of the charges and only thereafter dismissal order was passed.

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7. The Labour Court has held that though the Petitioner-Corporation claimed that the deceased employee has admitted the charges, it is only a general admission which cannot be taken as a specific and valid one, so as to establish the two charges against the deceased workman. Further, the Labour Court held that merely relying on the admission of the deceased employee, the enquiry officer ought not to have come to the conclusion and submitted a report and therefore, the dismissal of the deceased workman is unjustifiable. Further, it was held that the deceased employee was dismissed on 12.03.2002 and died on 12.02.2012 at the age of 63 years. Since the dismissal order is liable to be set aside, the deceased employee ought to be deemed to be in service during that period and the period from the date of dismissal till the date of superannuation has to be construed as the period of his service. Further, it was held that if the deceased workman would have been alive by the time, he would be entitled for pension and since he is not alive, his family members are entitled to claim the family pension.

8. A reading of the order would make it very clear that the deceased employee has admitted the guilt, but the Labour Court has held that the same is not suffice to prove his dishonest intention. However, as of now, the employee is no more and his wife also passed away.

9. Taking note of the submissions of the parties, this Court finds that the observation of the Labour Court that there was no dishonest intention cannot be brushed aside as it is a finding of fact. However, considering the submissions of the learned counsel for the respondents 2 to 4, that the legal heirs of the deceased employee are willing to give up backwages of 25% that has been awarded by the Labour Court from the date of dismissal till the date of Superannuation, the surviving legal heirs of the deceased employee/respondents 3 and 4 are entitled to the following reliefs.

(i) Pension amount payable to the deceased employee from the date of Superannuation till the date of his death.

(ii) Gratuity with interest @ 10% per annum, if not paid already.

(iii) Family pension amount due to the wife of the deceased employee Mrs. Gowri, from the date of the deceased employee till her death.



The said benefits shall be extended by the Petitioner-Corporation to the legal heirs of the deceased employee/respondents 3 and 4, within a period of three months from the date of receipt of a copy of this order.

This Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer,
III Additional Labour Court,
City Civil Court Annexure Building,
High Court Compound,
Chennai- 600 104.

+1 CC to Mr.M.Chidambaram, Advocate sr 35759
+1 CC to Mr.V.Ajay Khose, Advocate sr 35706.

W.P.No.13433 of 2018

PL(CO)
SP(18/10/2021)