



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.14701 of 2021

S.Amulnathan

... Petitioner

vs.

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd., Cuddalore Zone,
Villupuram.

... Respondent

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 pertaining to the proceedings in Ka.No.1033/Oo.Ni4/Tha.Na.AaPoKa (Vizhu)/kama/21, dated 07.06.2021 issued by the Respondent, quash the same and direct the Respondent to disburse the balance amount as per the Calculation Memo submitted in the representation dated 01.04.2021.

For Petitioner : Mr.R.Subramanian

For Respondent : Mr.C.S.K.Sathish

O R D E R

Petitioner/employee has come up with this Writ Petition challenging the proceedings dated 07.06.2021 issued by the Respondent and for a direction to the Respondent to disburse the balance amount as per the Calculation Memo submitted in the representation dated 01.04.2021.

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

3. It is no doubt true that, the Petitioner/employee has rendered 32 years of service in the Respondent-Corporation. But, he has been paid gratuity only for 24 years. The Petitioner/employee has also approached the Gratuity Authority, who has reported that, negotiations have been made and the



matter has been settled. In terms of Section 14 of the Payment of Gratuity Act, 1972, contracting out is not permissible.

4. Since the Petitioner/employee had the benefit of the Award dated 16.05.2002 passed by the Labour Court in I.D.No.11 of 2008, this Court has granted the relief as prayed for by him in W.P.No.25252 of 2011 vide order dated 08.02.2019. For better appreciation, relevant paragraphs of the said order are extracted hereunder:

"9. As regards the grant of back wages is concerned, it is a discretion vested in the Labour Court to grant full back wages or reduce wages or not to grant any wage at all. The denial of back wages by the Labour Court, in the opinion of this Court, appears to be justified in the circumstances of the case. However, the denial of continuity of service and other attendant benefits cannot be justified in the circumstances of the case. Once the Labour Court has set aside the order of dismissal on merits, the continuity of service has to necessarily follow reinstatement.

10. In the above circumstances, the Writ Petition is allowed and the Award of the Labour Court shall stand modified as under:

The Petitioner/workman is entitled to be reinstated with continuity of service without back wages and the Petitioner is also entitled to all attendant benefits, which is the consequence of counting of the entire past service, on his retirement. ..."

5. Though the Petitioner/employee has been reinstated with continuity of service with all attendant benefits, however without backwages, he ought to have been extended with the benefit of Gratuity for 32 years. The Gratuity Settlement form provided by the employer makes it clear that, Gratuity has been paid to the employee only for 24 years and not for 32 years.

6. According to the Petitioner/employee, there is shortfall in payment of Gratuity, which fact is not in dispute, as could be seen from the Gratuity Settlement form. As the Respondent/Transport Corporation is a 'State' within the meaning



of Article 12 of the Constitution of India, it is directed to re-work the Gratuity amount payable to the employee for 32 years and extend the benefit to him.

7. It is represented that, the Petitioner/employee has not disclosed the fact about his approaching the Controlling Authority for the purpose of computation of Gratuity amount payable to him. He should have narrated the facts correctly. Before the Gratuity Authority, it has been stated by the employer that, amount has been paid to the employee and the same has also been accepted by the employee. Of course, as stated earlier, contracting out is not permissible. The conduct of the employee in not bringing to the attention of this Court about the settlement arrived at, is not appreciated. Hence, this Court is of the view that, the Petitioner/employee has not approached this Court with clean hands.

8. It is represented that, the Respondent/Transport Corporation will re-work the Gratuity payable to the Petitioner/employee for 32 years. However, for approaching this Court with unclean hands, though this Court intends to impose costs of Rs.5,000/- on the employee, taking note of the pandemic situation, instead of imposing costs, interest on the Gratuity amount payable to the employee for a period of eight years, is deprived.

9. It is made clear that, the statement recorded before the Authority cannot be put against the Petitioner/employee.

10. The Respondent-Corporation is directed to pay the balance amount if any, due to the Petitioner/employee, if not already paid, within a period of eight weeks from the date of receipt of a copy of this order.

11. If there is any other claim other than Gratuity, it is open to the Petitioner/employee to agitate the same in the manner known to law, by approaching the Labour Court, by way of a Computation Petition.

In fine, the Writ Petition stands dismissed with the above direction and observation. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

(aeb)



To:

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd., Cuddalore Zone, Villupuram.

+1cc to M/s.C.S.K.Sathish, Advocate, S.R.No.36679

+1cc to Mr.R.Subramanian, Advocate, S.R.No.36531

W.P.No.14701 of 2021

BS (CO)
SU (13/10/2021)