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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.44251 OF 2016

AND

WMP.NO.38097 OF 2016

The Management,
State Express Transport | Corporation TN Ltd.,
Pallavan Salai,
Chennai- 600 002.

... Petitioner

-VS-

1. The Presiding Officer,
I Additional Labour Court, Chennai.
High Court Compound,
Chennai- 600 104.

2. M.Mohamed Ithris

... 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 of the 1st respondent in C.P.No.188/2014 dated 17.06.2016 and quash the award passed in C.P.No.188/2014 dated 17.06.2016, as illegal.

For Petitioner : Mr.M.Chidambaram

For Respondents : Mr.S.T.Varadharajulu (R2)

ORDER

The petitioner has come forward with the present writ petition challenging the order of the first respondent in C.P.No.188/2014 dated 17.06.2016, by which the Labour Court by observing that the workman is entitled to allowances only from the year 2011 to 2013 for three years directed the Management to pay a sum of Rs.8,11,828/- to the second respondent/workman.



2. The second respondent/workman worked as a driver in the petitioner corporation and on 12.03.2001, he was terminated from service by the petitioner-corporation. Challenging the same, the second respondent/workman raised Industrial Dispute in I.D.No.330 of 2003 before the III Additional Labour Court, Chennai and an Award was passed in the said I.D. on 20.08.2009 directing the petitioner to reinstate the workman in service with continuity of service without backwages and all other benefits. On 02.02.2012 the workman was permitted to rejoin the service. Since the petitioner had treated the workman as daily wage worker, the workman had filed Computation Petition No.188 of 2014, before the I Additional Labour Court, claiming a sum of Rs.10,53,286.40/- from the Management, on the ground that the petitioner ought to have reinstated the workman on September 2009 and is liable to pay the wages and all other benefits from September 2009 to June 2012. Further, it was claimed by the second respondent/workman that in view of the settlement arrived between the Management and Union in 1992, the Petitioner is bound to confirm the service of the workmen who have completed 240 days of service. The I Additional Labour Court vide order dated 17.06.2016 in C.P.No.188 of 2014 had observed that the workman is entitled to allowances only from the year 2011 to 2013 for three years and directed the Management to pay a sum of Rs.8,11,828/- to the second respondent/workman.

3. When the matter is taken up for hearing it is represented by Mr.S.T.Varadharajulu, the learned counsel for the second respondent/workman that the petitioner has confined the relief only with regard to backwages, as per the award viz., date of dismissal i.e., 12.03.2001 till the date of reinstatement in services i.e., 02.02.2012 and also subsequent revision that he is entitled to. It is further submitted by the learned counsel for the second respondent that the workman was superannuated on 31.12.2014.

4. Heard both sides. Perused the records.

5. Even assuming that employee is a casual labourer, he had the benefit of award dated 20.08.2009 in I.D.No.330 of 2003 by the Labour Court wherein he has been directed to be reinstated without backwages, but with continuity of service and other consequential and attendant benefits. Once the employee has been directed to be reinstated, then his past period have to be taken into account for the purpose of continuous service under Section 25 B of the I.D.Act 1947 and also with reference to Section 3 (1) of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. In the present case on hand there is a settlement between Union and Management to grant permanent status to employees on completion of 240 days in a calendar year. In the case on hand, the



employee has given details with regard to the backwages before the Labour Court but has not produced any other pay slip except Pay slip for December 2014 and the employer has produced Ex.P2-Settlement entered between the Management and Union. That apart once the award has become final, it is mandatory duty of the employer to implement various settlement that has been entered into between the Management and Union, in terms of the Section 18 (3) of the Industrial Disputes Act and the concerned workmen is also entitled to the benefits. In the absence of any document produced by the Management and though the Management calculated the amount payable to the employee, the I Additional Labour Court has computed the amount payable to the employee and held that though the award was passed as early as 20.08.2009 and if the employee had been reinstated 21.08.2009, he would be completed one year on 20.08.2010. For the sake of convenience, the relevant paragraph is extracted hereunder

"6.The award was passed on 20.08.2009. If he was reinstated on 21.08.2009 he would have completed one year on 20.08.2010. So from 21.08.2009 to 20.08.2010 the petitioner would be entitled only to daily wages. The respondent has stated that this daily wage is Rs.230/-. He would have worked for 26 days on and average each month and therefore he would be entitled to Rs.71,760/- towards daily wages for the first year. From September 2010 onwards the petitioner would be entitled to the same wages as a permanent workman. The petitioner has computed his wages on the basis of the wages payable to the permanent workman. The correctness of the wages payable to a permanent workman has not been disputed by the respondent. It has only contended that the petitioner is not entitled to it. Therefore from 1.9.2010 to 31.1.2012 the petitioner would be entitled to full wages on par with permanent workman and he would be entitled to Rs.3,07,943/-. From 01.02.2012 the petitioner would be entitled to the difference between the wages actually paid to him and the wages that should have been paid to him. [The petitioner has computed the difference. As I have already stated the respondent has not disputed the correctness of the wages that according



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to the petitioner was paid to him. Therefore the petitioner would be entitled to a sum of RS.1,63,923/- for the year 2012 from February to December 2,64,492/- for the year 2013-2014 towards difference in pay. In total the petitioner is entitled to | Rs.8,08,118/- towards wages.

6. A reading of the aforesaid paragraph would make it very clear that I Additional Labour Court has clearly analysed the status of the workman and granted the relief as stated above. As the employee is not insisting on the computed amount under various heads, I find that there is no perversity in the order of the Labour Court in C.P.No.188 of 2014 dated.17.06.2016. The Management cannot give a go-bye to the settlement.

7. Hence, the award passed in C.P.No.188 of 2014 dated 17.06.2016 is confirmed and this Writ Petition is dismissed. In view of the fact that the employee is not claiming benefits under various category, except backwages, it is made clear that if any amount has already been deposited in the Labour Court, the employer is entitled to withdraw the amount claimed towards various other heads except backwages, and if not paid the amount granted by the Labour Court, with regard to backwages shall be paid within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

arr

To
The Presiding Officer,
I Additional Labour Court, Chennai.
High Court Compound,
Chennai- 600 104.

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.35760
+1cc to Mr.S.T.Varadharajulu, Advocate, S.R.No.35751

W.P.No.44251 of 2016

PA(CO)
RLP(06/10/2021)