IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.01.2021
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.3204 of 2014

V.Saroja ... Petitioner

Vs.

State Express Transport Corporation,
Rep. by its Managing Director,
Pallavan Salai,
Chennai - 600 002. ... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondent to settle the petitioner's husband namely R.Vasudevan forthwith all the terminal benefits such as employees' contribution of PF, difference in gratuity, family pension, the amount payable under the social security scheme, etc., and also the wages, the encashment of earned leave, bonus and exgratia payable to her husband from the date of his dismissal to the date of his reinstatement, after adjusting the amounts already paid to him with interest at the rate of 12% per annum and award costs.

For Petitioner : Mr.R.Krishnaswamy

For Respondent : Mr.K.Kathiresan

ORDER

This writ petition has been filed by the petitioner seeking a mandamus, directing the respondents to pay the difference in gratuity, family pension, the amount payable under the social security scheme and also the wages, earned leave, bonus and exgratia payable etc., along with 12% interest.

2. According to the petitioner, her husband R.Vasudevan was employed as a driver in the respondent corporation with effect from 08.10.1980 and he was made permanent with effect from 01.08.1981. While so, he was dismissed from service on 08.08.1991 for certain alleged misconduct. Consequently, the respondent corporation filed an Approval Petition No.136 of 1991 and sought approval of the dismissal of the petitioner's husband from service. The Industrial Tribunal, after enquiry, rejected the said approval petition on 23.11.1995, against which, the respondent filed W.P.No.10095 of 1996 and obtained an order of

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interim stay. Feeling aggrieved, the petitioner's husband filed a vacate stay petition. Subsequently, as per the interim order of this Court dated 03.02.1997, the respondent Corporation reinstated the petitioner's husband with current wages, without prejudice to their rights in the pending W.P.No.10095 of 1996 and deposited a sum of Rs.1,50,000/- to the credit of A.P.No.136 of 1991 before the Industrial Tribunal. Thereafter, the said writ petition was dismissed thereby confirming the order passed by the Industrial Tribunal in the approval petition. It is the further case of the petitioner that her husband was due to retire from service on 30.09.2020, however, he died on 31.07.2010, while he was in service. Subsequent to the death of the deceased, the respondent sanctioned Rs.1,00,000/- under Family Benefit Scheme after adjusting the dues payable to him, Rs.81,291/- towards gratuity, besides receiving provident fund contributions, at the time of dismissal of him from service in the year 1991. For claiming the balance terminal benefits and other dues payable, the petitioner submitted a representation dated 24.12.2013 to the respondent and the same was not considered till date. Hence, this writ petition.

3. The learned counsel for the petitioner submitted that as per the order of this Court dated 01.08.2003 passed in WP.No.10095 of 1996, the order passed by the Industrial Tribunal rejecting the petition filed by the respondent Corporation seeking approval of dismissal of the petitioner's husband from service, was confirmed and hence, the petitioner's husband ought to have been paid the benefits for the entire period of service. However, the respondent Corporation has taken into account his service only from the date of reinstatement i.e., on 02.04.1997 to the date of death i.e., on 31.07.2010 and paid gratuity only for 12 years, after deducting one year service towards non-qualifying service. The learned counsel further submitted that the respondent Corporation has not settled the employee contribution of provident fund and other dues payable to her husband, which are his valuable rights and are no more considered to be a bounty to be handed out by the respondents at their whims. Hence, the learned counsel prayed for appropriate direction to the respondent in this regard.

4. On the other hand, the learned counsel for the respondent fairly submitted that the respondent would consider the representation of the petitioner and pass orders, on merits, within a time frame to be stipulated by this Court.

5. Heard both sides and perused the materials available on record.

6. Having regard to the admitted fact that the order passed by the respondent dismissing the petitioner's husband from service, was not approved by the Industrial Tribunal, which was

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also confirmed by this Court vide order of this Court dated 01.08.2003 in WP.No.10095 of 1996, the respondent Corporation ought to have paid the entire benefits due to him. It is also not in dispute that the petitioner's husband died, while he was in service. According to the petitioner, the respondent Corporation has not paid the entire amount due to her husband, which is a valuable right and the same cannot be considered as a bounty to be handed out by the respondent at their whims. This Court finds some bonafide in the contention so raised on the side of the petitioner.

7. In the decision of the Supreme Court in S.K.Dua v. State of Haryana and others [MANU/SC/7048/2008 : 2008 (3) SCC 44], it was held as follows:-

> "14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines, or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant that retiral benefits are not in the nature of 'bounty' is, in our opinion, well founded and needs no authority in support thereof."

8. In the light of the aforesaid legal principle, this Court finds it appropriate to issue appropriate direction to the respondent in favour of the petitioner.

9. Accordingly, this writ petition stands disposed of, directing the respondent Corporation to consider the petitioner's representation dated 24.12.2013 and settle the balance dues payable to the petitioner, if not already settled, within a period of eight weeks from the date of receipt of a copy of this order, failing which, the respondent Corporation shall pay interest at the appropriate rate, for the belated payment. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vrc

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To
The Managing Director,
State Express Transport Corporation,
Pallavan Salai,
Chennai - 600 002.

+1cc to Mr.Ajoy Khose , Advocate SR.No. 2408
+1cc to Mr.K.Kathiresan , Advocate SR.No. 2413

W.P.No.3204 of 2014

RSI (CO)
A.SK(16.06.2021)

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