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W.P.No.2216 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.2216 of 2019

S.Malarvizhi
Petitioner

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Vs

1.The Managing Director,
Tamilnadu State Transport Corporation,
Villupuram Ltd.,
Salamedu, Villupuram 605 602.

2.The General Manager,
Tamilnadu State Transport Corporation
Kancheepuram Region,
Ponnerikarai,
Kancheepuram – 631 552.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 2nd respondent Transport Corporation to consider the representation dated 15.06.2016 by notionally reinstating the employee and grant the legal heirs all consequential benefits by treating him to be a regular employee entitled to all monetary benefits till the date of his death (10/08/2015) and direct the respondent Transport Corporation to pay the terminal benefits and family pension to the legal heirs of the deceased employee.



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For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.M.Aswin
Standing Counsel

ORDER

The prayer sought for herein is for a writ of mandamus directing the 2nd respondent Transport Corporation to consider the representation dated 15.06.2016 by notionally reinstating the employee and grant the legal heirs all consequential benefits by treating him to be a regular employee entitled to all monetary benefits till the date of his death (10/08/2015) and direct the respondent Transport Corporation to pay the terminal benefits and family pension to the legal heirs of the deceased employee.

2. The petitioner's husband one Sundaram was working as Driver at the respondent Transport Corporation from 1987. While he was on duty on 16.01.2009 he involved with an accident pursuant to which disciplinary proceedings had been taken against the petitioner's husband and ultimately he was removed from service on 01.03.2011.



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3. Though such an order of removal from service was passed by the respondents, in order to get approval from the authority, under Section 33(2)(b) of the Industrial Disputes Act, 1947 an approval petition was filed by the Management, which was considered and rejected by concerned authority in A.P.No.101/2011 on 21.04.2015. Thereafter, the petitioner's husband died on 10.08.2015. Now the deceased employee's wife i.e. the petitioner has come before this Court by filing the present writ petition seeking the benefits by considering the continuous service of the petitioner husband till his death i.e. 10.08.2015 and consequential retirement cum death benefits as well as pensionary benefits.

4. Heard Mr.K.M.Ramesh, learned counsel appearing for the petitioner who would submit that when the 33(2)(b) petition was rejected on 21.04.2015, the petitioner's husband was died only on 10.08.2015, therefore the moment the said petition under Section 33(2)(b) was rejected, it should date back from the date of original dismissal of service i.e. from 01.03.2011, for all purposes the petitioner's husband should have been considered to be or deemed to have been in service, therefore, he was entitled to get all service benefits and the same now to be extended to the petitioner who is the legal heir i.e. the wife of the deceased



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employee, hence the learned counsel appearing for the petitioner seeks indulgence of this Court in this regard.

5. On the other hand, Mr.M.Aswin, learned Standing Counsel appearing for the respondents would submit that as against the order of rejection of approval petition under Section 33(2)(b), the Management has preferred a writ petition which is at the SR stage yet to be numbered. In the result, since the employee died on 10.08.2015, the legal heirs have to be brought on record and thereafter only have to be persuaded, therefore, at this juncture no relief can be expected by the petitioner as sought for in this writ petition, hence he seeks dismissal of this writ petition.

6. I have considered the said rival submissions made by both sides and have perused the materials placed before this Court.

7. As has been rightly pointed out by the learned counsel appearing for the petitioner, once the Section 33(2)(b) petition is dismissed by the concerned authority, immediately action should have been taken by the Management by filing a further appeal by way of writ petition before this



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Court, but as on today no such writ petition has been moved except the SR stage petition as claimed by the learned Standing Counsel for the Management.

8. Moreover, it is one of the settled legal proposition that once the Section 33(2)(b) petition under the Industrial Disputes Act, 1947 is passed by rejecting the approval sought for by the Management, then it shall be deemed that the dismissed or removed employee has been in service continuously unmindful of the dismissal order.

9. If that being so, the date on which the employee was dismissed i.e. from 01.03.2011 till his death i.e. 10.08.2015 he is entitled to be considered as has been in service, therefore the said service period shall be taken into account to the petitioner's service for the purpose of death cum retirement as well as pensionary benefits. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

That there shall be a direction to the respondents to treat the petitioner's husband i.e., the deceased employee had been in service continuously without having the dismissal order



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dated 01.03.2011 till his death i.e. 10.08.2015. Therefore, for the said period if not the full backwages, the deceased employee would be entitled to get 50% backwages, based on which, the continuity of service shall be calculated and the arrears of the 50% of the backwages with arrears of pension i.e. family pension as well as gratuity or any other amount payable due by way of death cum retirement benefits to the deceased employee be calculated and paid to the petitioner. The needful as indicated above shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

10. With this direction, this Writ Petition is disposed of. No costs.

24.08.2022

Index : Yes / No

Speaking Order : Yes / No

Sgl



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To

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R. SURESH KUMAR, J.

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