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W.P.Nos.4550 & 20719 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.4550 & 20719 of 2019
and WMP.No.19879 of 2019

W.P.No.4550 of 2019

N.Manjula,
W/o. S.Narasimhan

..Petitioner

Vs.

1. The Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam,
Chennai – 600 002.

2. The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund Trust,
Pallavan Salai, Chennai – 600 002.

.. Respondents

W.P.No.20719 of 2019

The Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam,
Chennai – 600 002.

..Petitioner

Vs.

S.Narasiman (Deceased)



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1. N.Manjula
W/o.S.Narasiman

2. N.Gurumurthy
S/o.S.Narasiman

3. N.Jansirani,
D/o.S.Narasiman

4. N. Lakshmi
D/o.S.Narasiman

5. Mr.Sanjeevi,
F/o.S.Narasiman

6. Mrs. Salamma,
M/o.S.Narasiman

.. Respondents

Prayer in W.P.No.4550 of 2019: Writ Petition filed under Article 226 of the Constitution of India for Writ of Mandamus, directing the respondents to pay backwages from 2011 to the date of death of petitioner's husband and family pension and other terminal benefits to the petitioner.

Prayer in W.P.No.20719 of 2019: Writ Petition filed under Article 226 of the Constitution of India for Writ of Certiorari, calling for the records pertaining to the order passed in C.P.No.237 of 2011 dated 22.02.2019 on the files of the IInd Additional Labour Court, Chennai and quash the same.

For Petitioner and : Mr.Mr.S.T.Varadharajulu
respondents in
W.P.No.4550 of 2019
and W.P.No.20719 of
2019 respectively



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For first respondent : Mr.M.Chidamabaram
and petitioner in
W.P.No.4550 of 2019
& 20719 of 2019
respectively

For second respondent Mr. C.S.K.Sathish
in W.P.No.4550 of
2019

ORDER

Since the issue raised in both the writ petitions is one and the same and are interconnected and the parties are also same, with the consent of learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.

2. The petitioner in W.P.No.4550 of 2019 is the wife of the worker of the Management. The petitioner in W.P.No.20719 of 2019 is the Management.

3. The worker was appointed as Tradesman at the Management on 12.06.1982. In the year 2006, he became sick, therefore, there was a



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long leave or absence on the part of the worker, pursuant to which, a disciplinary action was taken and ultimately by order dated 23.07.2007, the worker was dismissed from service by the action of the Management. At the time of such order of dismissal was passed against the worker, it was his claim that there was a common issue pending before the concerned authority under the Industrial Disputes Act, 1947 [in short, 'the Act'], therefore, if at all any dismissal order to be passed against the worker like the petitioner's husband, the Management ought to have filed an application for approval under Section 33(2)(B) of the I.D Act and such an application since was not filed, the very termination or dismissal order made against the worker become illegal or unenforceable.

4. In this regard, in order to get salary for the period from 23.07.2007, the worker, while he was alive, filed a computation petition in C.P.No.237 of 2011 before the Labour Court and when the said CP was pending, the worker died on 15.05.2012. Subsequently, the petitioner in W.P.No.4550 of 2019 was impleaded as legal representative of the worker in the CP and ultimately the CP was decided by the Labour Court by order dated 22.02.2019. In the said order, the Labour Court had



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held that there was no preexisting right on the worker, therefore, the legal heir of the deceased worker also will have no remedy to seek for any computation and hence the CP had to be dismissed. However, on humanitarian ground, the Labour Court directed the Management to pay one time compensation to the legal heirs of the deceased i.e., wife and children at the rate of Rs.1,00,000/-(Rupees one lakh only) for wife and Rs.50,000/- each for a children, totally Rs.3,50,000/- (Rupees Three Lakhs fifty thousand only).

5. Aggrieved over the said order passed by the Labour Court in C.P.No.237 of 2011 dated 22.02.2019, the Management filed writ petition in W.P.No.20719 of 2019.

6. In the meanwhile, the wife of the deceased worker has filed writ petition in W.P.No.4550 of 2019 seeking for a writ of mandamus to pay the backwages from 2011 till the date of the death of the petitioner's husband and also to pay the family pension and other terminal benefits, that is how, these two writ petitions came to be filed for the respective reliefs.



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WEB COPY 7. Heard Mr.S.T.Varadarajulu, learned counsel appearing for the worker's wife and Mr.M.Chidambaram, learned Standing Counsel appearing for the Management.

8. The learned counsel appearing for the Management submits that, even though it was a claim of the worker that there was a general/common dispute pending before the concerned authority, therefore, it become obligatory on the part of the Management to seek for a permission under Section 33(2)(B) of the Act, no such common issue was pending and therefore, the question of filing any approval petition by the Management did not arise. Assuming that if at all Section 33(2)(B) petition was not filed by the Management, the remedy open to the worker was to file a petition under Section 33A of the Act and that action had not been taken by the deceased worker while he was alive. Instead, he straightway approached the Labour Court by filing a computation petition, for which, there was no preexisting right as his right of getting any money, which should be computed as sought for in the CP had not been made either by way of Labour Court award or any notification or



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any settlement between the parties that is why the Labour Court while deciding the CP had held that there was no preexisting right accrued on the deceased worker, hence, the CP should be dismissed.

9. When the Labour Court had come to such a conclusion to dismiss the CP, however it went to the extent of granting the relief of paying compensation of Rs.3,50,000/-(Rupees Three lakhs fifty thousand only) to the legal heirs of the deceased worker only on humanitarian ground, for which, absolutely there is no scope under the Act. Therefore on that ground, the learned counsel appearing for the Management submits that the Management can successfully challenge the impugned order passed by the Labour Court in the CP.

10. On the other hand, Mr.S.T.Varadarajulu, learned counsel appearing for the worker's side, has relied upon the proceedings issued by the Transport Department dated 28.07.2021, under which, how the cases of ex-employees had to be dealt with. In respect of the employees dismissed from service, during the pendency of the litigation triggered by the employee, if he died, what benefit can be extended to such employees



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family also has been indicated in the said letter of the Government dated 28.07.2021, where he relies paragraph 5, which reads thus:

“5. We further submit that the Hon'ble Court to approve the following decision of the Government.

(i) In respect of Ex-employees having required qualifying service for pension under 1998 scheme to go on compulsory retirement on the date of dismissal and to allow eligible retirement benefits as per rules in force.

(ii) In respect of Ex-employees who do not have qualifying service for pension under 1998 scheme at the time of dismissal and they were in the category of Regular, Reserve and Daily Wage, such cases shall continue to be contested.

(iii) In respect of Ex-employees who expired during litigation, to proceed to settle the eligible death cum retirement benefits to the legal heirs of the deceased workman (up to the date of death or non-employment period as “No Work No Pay” and also the legal heirs shall not claim for appointment under compassionate grounds.”

11. By relying upon this communication, the learned counsel for the worker's side would contend that assuming that the Labour Court had held that there was no preexisting right, as against which, the worker's



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wife did not file any writ petition challenging the said portion of the order, under Clause (iii) of paragraph 5 of the said letter dated 28.07.2021 of the Government, if an ex-employee expired during litigation, the Management shall proceed to settle the eligible death cum retirement benefits to the legal heirs of the deceased workmen by treating the non-employment period as “No Work No Pay” and also with the condition that the legal heirs shall not claim appointment under compassionate ground. Atleast this minimum benefit as indicated in the Government letter can be extended to the worker's wife and the legal heirs, even since that has been denied or not been paid, it triggered the petitioner to file this writ petition in W.P.No.4550 of 2019 seeking for a writ of mandamus.

12. Heard Mr.C.S.K.Sathish, learned counsel appearing for the second respondent/pension trust in W.P.No.4550 of 2019, who supported the arguments advanced by the learned counsel appearing for the Management.



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13. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14. As has been rightly pointed out by the learned counsel appearing for the Management, the Labour Court after having held that there was no preexisting right to execute and the legal heirs of the deceased worker will have no remedy, the plea raised by the worker's side by filing a computation petition in C.P.No.237 of 2011 ought to have been rejected. However on humanitarian consideration, the Labour Court has gone further and gave direction to pay compensation to the extent of Rs.3,50,000/-(Rupees Three lakhs fifty thousand only) to the deceased worker's family.

15. This kind of humanitarian consideration is not possible for the Labour Court after having held that the worker did not have any right to claim for computation of the salary or due payable to him. Therefore, the said portion of the order passed by the Labour Court directing the Management to pay compensation to the extent of Rs.3,50,000/-(Rupees



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Three lakhs fifty thousand only) to the family of the deceased worker, in the considered view of this Court shall not stand in the legal scrutiny.

Hence, it is liable to be set aside.

16. But at the same time, as has been rightly pointed out by the learned counsel appearing the worker's side, the Government itself thought it fit to give quietus to these kind of litigations filed by the ex-employees of the various transport corporation and in this regard, if an ex-employee during the pendency of the litigation expires, instead of pursuing further the matter by fighting with the legal heirs of the deceased employee, the Management, in order to purchase peace and to settle the issue amicably, can proceed to settle the eligible death cum retirement benefits to the legal heirs of the deceased workmen with two conditions that there would be no backwages for the non-working period by adopting the principle of “No Work No Pay” and also on the condition that no compassionate appointment shall be claimed by the legal heirs of the deceased worker. This minimum gesture shown as indicated by the Government in the letter referred to above dated 28.07.2021 can very well be extended to the legal heirs of the deceased worker by applying clause



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(iii) of paragraph 5 of the said letter dated 28.07.2021 as referred to above, as the case of the worker that is the legal heir of the deceased worker herein falls only in that category.

17. Therefore, for all these reasons stated above, this Court is inclined to dispose of these writ petitions with the following orders:

- ◆ That the direction given by the Labour Court in C.P.No.237 of 2011 by order dated 22.02.2019 directing the Management to pay the compensation to the legal heirs of the deceased worker to the extent of Rs.3,50,000/- (Rupees Three lakhs fifty thousand only) is hereby set aside.
- ◆ However, there shall be a direction to the Management to calculate the death cum retirement benefits, for which, the deceased worker eligible to get it and pay the same to the legal heirs i.e., the petitioner in W.P.No.4550 of 2019 and her children. Apart from the said eligible death cum retirement benefits, the legal heirs of the deceased worker shall not be entitled to seek for any backwages and also would not entitle to seek for any compassionate appointment.



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- ◆ The needful as indicated above shall be undertaken by the Management within a period of eight(8) weeks from the date of receipt of a copy of this order.
- ◆ It is made clear that while calculating the death cum retirement benefits, the period from 23.07.2007 i.e, the date on which the petitioner was dismissed from service till 15.05.2012 i.e., the date on which the worker died shall be treated as a duty period only for the purpose of calculating the pensionary benefits.
- ◆ It is further made clear that, for the said period the pension fund contribution of the employer shall be paid and insofar as the employee's contribution is concerned, that also shall be paid by the Management after deducting the same from the amount payable to the worker.

With these directions, both the writ petitions are disposed of accordingly. No Costs. Connected miscellaneous petition is closed.

26.07.2022

Index : Yes/No
Internet: Yes/No

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R.SURESH KUMAR.J,

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To

1. The Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam,
Chennai – 600 002.
2. The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund Trust,
Pallavan Salai, Chennai – 600 002.

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