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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.27931 of 2010

P.Chelladurai

...Petitioner

Vs.

The Managing Director,
State Express Transport Corporation
(Tamilnadu) Ltd.,
Pallavan Salai,
Chennai-600 002.
Respondent

...

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order letter No.083941/U.Na.6/SETC/2004 dated 23.12.2004 of the respondent and quash the same and consequently direct the respondent to fix correct salary on par with the similarly placed workman.

For Petitioner : Mr.S.T.Varadarajulu

For Respondent : Mr.M.Chidambaram

ORDER

This present Writ Petition is filed challenging the impugned order dated 23.12.2004 by which recovery is sought to be made of the excess payment on the premise that the petitioner is not entitled to the same in terms of a communication dated 16.11.2004 issued by the State Express Transport Corporation (Tamilnadu) Ltd., the respondent herein.

2. The petitioner was employed as a conductor in the respondent corporation on 03.02.1986 and issued with a charge memo for certain irregularities on 17.12.1990. The Enquiry Officer held that all the charges were proved and based on the report of the Enquiry Officer, the respondent/corporation dismissed the petitioner from service by order dated 10.09.1992. Aggrieved by the same, the petitioner preferred an appeal before the Labour Court, Tirunelveli in I.D.No.160 of 1993 and the Labour Court by award dated 11.08.1994, set aside the order of



dismissal and provided reinstatement with continuity of service but not entitled to any back wages or any other attendant benefits. The relevant portion of the dismissal order is extracted hereunder:

"In some of the cases the Court passes order to reinstate an employee without back wages but with continuity of service. This implies that the total period of non-employment of the worker shall be treated as leave on loss of pay as no back wages are awarded for that period and therefore the worker is entitled neither for increment nor for review."

3. It is submitted by the learned counsel for the petitioner that once continuity of service is ordered by the tribunal then the petitioner would automatically be entitled to other entitlements including increments and wage settlement. Thus the impugned proceedings which seeks to recover excess amount on the premise that the same has been paid erroneously on the premise that salary ought to be fixed in terms of the above direction without taking into account increment and wage settlement is unsustainable. The order of tribunal which has been extracted above leaves no room for any doubt that the tribunal has proceeded to provide for continuity of service without back wages or other attendant benefits. Misconstruction of the directions issued by the tribunal has resulted in fixation of lower salary than what is legitimately due.

4. The submissions of the petitioner that the payment ought to be fixed on par with similarly placed workmen by taking into account the increments and wage settlements though unsustainable insofar as the past periods i.e., the period prior to reinstatement, however, the tribunal having directed reinstatement of service it may not be appropriate to construe the direction that even after being reinstated salary is to be fixed without taking into account increments and wage settlements which would result in the petitioner being paid wages lower than that fixed for similarly placed workmen. Such construction may produce results which are incongruous and may lead to a situation where the order of the tribunal would produce results that are discriminatory.

5. It is however, made clear that the tribunal having held that the petitioner would not be entitled to back wages and other attendant benefits though salary shall be fixed notionally on par with similarly placed workmen taking into account increments and wage settlement however the same shall payable only from the date of reinstatement.

6. The impugned proceedings is set aside, with liberty to the respondent to calculate excess payments made, if any,



bearing in mind the observation made made above and to proceed in accordance with law to recover the same. The above exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order.

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7. With the above direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

Psa

To

The Managing Director,
State Express Transport Corporation
(Tamilnadu) Ltd.,
Pallavan Salai, Chennai-600 002.

+1cc to Mr.S.T.Varadarajulu, Advocate Sr.No.25380

+1cc to Mr.M.Chidambaram, Advocate Sr.No.25177

W.P. No.27931 of 2010

SSI(CO)
RVM(02/06/2022)