



W.P.(MD)Nos.1415 & 1416 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.1415 & 1416 of 2013

and

M.P(MD)No.1 of 2013

and

W.M.P(MD)Nos.21041 & 21042 of 2018

W.P(MD)No.1415 of 2013

T.Murugesan (died)

2.Kamalam

3.Saravanan

4.Sivalakshmi

5.Patturani

6.Sakthivel

7.Ponlingavel

8.Thlagamani

... Petitioners

(Petitioners 2 to 8 herein substituted
vide Court Order, dated 21.02.2020)

vs

1.The General Manager,
State Express Transport Corporation,
Chennai.



W.P.(MD)Nos.1415 & 1416 of 2013

2.The Preceding Officer,
Labour Court,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in C.P.No.27 of 2011, on the file of Labour Court, Tirunelveli and quash the same consequently direct the first respondent to pay Rs.8,45,321/- as prayed for earlier along with interest.

For Petitioners : Mr.T.Selvakumaran

For R1 : Mr.K.Sathiyasingh

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T.Murugesan

- 2.Kamalam
- 3.Saravanan
- 4.Sivalakshmi
- 5.Patturani
- 6.Sakthivel
- 7.Ponlingavel
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... Petitioners

(Petitioners 2 to 8 herein substituted
vide Court Order, dated 21.02.2020)

VS



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- 1.The General Manager (Administration),
State Express Transport Corporation,
Pallavan Salai,
Chennai-600 002.
- 2.The Branch Manager,
State Express Transport Corporation,
Vannarpettai,
Tirunelveli-627 003.
- 3.The Administrator,
State Express Transport Corporation,
Employees Pension Fund,
Chennai-2.
(R3-impleaded vide Court order
dated 21.02.2020) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to pay regular pension and consequently direct the respondents to pay the arrears of pension from 30.05.2009 till today.

For Petitioners : Mr.T.Selvakumaran

For R1 & R2 : Mr.K.Sathiyasingh

COMMON ORDER



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One writ petition has been filed to quash the impugned order in C.P.No.27 of 2011, on the file of the Labour Court, Tirunelveli and consequently direct the first respondent to pay Rs.8,45,321/- along with interest and another writ petition was filed to direct the respondents to pay regular pension and to pay the arrears of pension from 30.05.2009 till today.

2. The petitioner T.Murugesan has filed this writ petition, pending writ petition, the petitioner died and the legal heirs of the deceased were impleaded as petitioners 2 to 8 as per the order of this Court, dated 21.02.2020.

3. The deceased petitioner was working as a driver in the respondent Transport Corporation. While he was driving the bus, he met with an accident and he suffered grievous injuries in his left thigh and fractured in left leg. The petitioner was referred to Medical Board and the Medical Board has submitted a report on 07.12.2004 stating that the petitioner was not fit for driving the bus. Therefore, the petitioner sought alternative employment and to grant last drawn salary and other increments. But the respondents have not given any alternative



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Hence, the petitioner filed I.D.No.33 of 2007 before the Labour Court, Tirunelveli and the said I.D. was allowed on 17.08.2009. The Labour Court has held that the petitioner is entitled to get last drawn salary from 27.12.2004 and has held the petitioner is not entitled to get increments for a period of two years for which the petitioner did not file any appeal against the order in domestic enquiry. The petitioner requested the Branch Manager, State Express Transport Corporation, Vannarpettai, Tirunelveli to implement the award passed in I.D. No. 33 of 2007 dated 17.08.2009, but the Branch Manager did not pay any amount including pension and the payable amount is Rs.10,64,877/-. The petitioner submitted a representation on 23.04.2010 and on 03.05.2010 to pay the said amount and pension from 15.05.2009. Thereafter the petitioner filed W.P.No.7545 of 2010 to implement the order of Labour Court in ID No.33 of 2007. The respondents had submitted the draft Board Resolution wherein it was resolved to pay Rs.2,93,897/- (after deducting Rs.17,371/- equal to last drawn wages from 27.12.2004 to date of retirement and Rs.71,712/- towards gratuity, Rs.26327/- towards pension arrears and Rs.66,777/- towards commutation from 27.12.2004 to date of retirement as ordered by Labour Court. But the claim of the petitioner is he is entitled to more than the above calculation. Hence the Hon'ble Court has



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directed to the respondents to pay the said amount within a period of 10 days and the petitioner was directed to work out his rights by filing appropriate petition before Labour Court. The claim of the petitioner is that he is entitled to Rs. 11,56,589/-, the respondents have already paid Rs.2,93,897/-. From the balance amount of Rs.8,62,692/- after deducting damage to the bus of Rs.17,371/- the petitioner claimed Rs.8,45,321/-. The contention of the petitioner is that one Somasundaram appointed on 26.06.1986 had received gratuity of Rs.3,49,845/- but the petitioner had received only 71,000/- The said Somasundaram received salary of Rs.14,110/- on 30.05.2009, if the accident did not occur then the petitioner would have received Rs.14,110/-. Thereafter the petitioner had filed C.P. No. 27 of 2011 and the same was dismissed. Aggrieved over the same the present writ petition is filed.

4. The respondent filed counter affidavit stating that the petitioner has faced disciplinary proceedings for rash and negligent driving and was punished vide order dated 23.05.2005 with stoppage of increment for 2 years. Then the petitioner was referred to Medical Board wherein it was reported the petitioner is not fit for driving. The petitioner raised I.D. No.33 of 2007 and the Labour Court



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has held that the petitioner is eligible to get last drawn salary from 27.12.2004 and not eligible to get increment for 2 years for which he did not file any appeal regarding order of domestic enquiry and cost of damage Rs.17,371/-. Thereafter the petitioner had filed W.P.No.7545 of 2010 to implement the order of Labour Court in I.D. No.33 of 2007. This Court disposed the said writ petition on 02.12.2020 with a direction to work out his rights by filing appropriate Claim Petition before Labour Court claiming the amount. The petitioner filed C.P. No. 27/2011 before the Labour Court, Tirunelveli claiming for a sum of Rs.8,62,692/- and the said C.P. No.27/2011 came up for hearing on 29.05.2012. The Labour Court, Tirunelveli has dismissed the claim petition stating that as per the award passed in I.D.No.33/2007 the claim of the petitioner was considered the Labour Court has allowed the claim to the extent that the petitioner is entitled to full salary based on the last drawn salary and consequential benefits after deducting the damages cost of Rs.17,371/-. The Labour Court has denied increments for a period of two years for which the petitioner did not file any appeal against the order in domestic enquiry and has denied the 12(3) settlement wage revision and hence the claim of the petitioner was rightly denied by the Labour Court.

5. The petitioner has claimed to pay the amount for the month of



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05.12.2002 to 27.12.2004. The petitioner has submitted a calculation sheet, where he has stated that the petitioner is entitled to Rs.15,00,000/- and more. The claim of the respondents is that the petitioner has not worked during this period and he was undergoing medical treatment as well as he was facing the disciplinary proceedings and therefore, the petitioner is not entitled to any amount and prayed to dismiss the writ petition.

6. Heard Mr.T.Selvakumaran the learned counsel appearing for the petitioner and Mr.K.Sathiyasingh the learned counsel appearing for the respondents and perused the materials available on record.

7. It is seen that the petitioner has not worked for the period from 05.12.2002 to 27.12.2004. However, the petitioner has submitted an application for providing alternative job, since the respondents have not granted alternative job and hence the petitioner could not work. It is also seen that the petitioner was facing disciplinary proceedings which ended on imposing punishment of stoppage of increment for two years. As rightly pointed out by the respondents the Labour Court has specifically denied other benefits in I.D. No. 33 of 2007,



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therefore the petitioner cannot claim the said benefits now. However now the legal heirs of the deceased employee are prosecuting this case and to meet the ends of justice this Court is of the considered opinion that the respondents shall pay an additional amount of Rs.1,00,000/- to the deceased employee's legal heirs.

8. In view of the above, the writ petition stands allowed to the extent as stated above and the respondents are directed to pay a sum of Rs.1,00,000/- as lumpsum to the wife of the deceased. No costs. Consequently, connected miscellaneous petitions are closed.

20.04.2022

Index : Yes / No

Internet : Yes

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Chennai.
- 2.The Preceding Officer,
Labour Court,
Tirunelveli.
- 3.The General Manager (Administration),
State Express Transport Corporation,
Pallavan Salai,
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- 4.The Branch Manager,
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- 5.The Administrator,
State Express Transport Corporation,
Employees Pension Fund,
Chennai-2.

S.SRIMATHY, J

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Order made in
W.P.(MD)Nos.1415 & 1416 of 2013

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