



WEB COPY

W.P.(MD)No.1848 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.03.2022

PRONOUNCED ON : 19.05.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.1848 of 2014

and

M.P.(MD)No.1 of 2014 and

W.M.P.(MD)No.5271 of 2018

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Bye- Pass Road, Madurai.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Bye- Pass Road, Madurai.

... Petitioners

vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.S.Perumal

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the 1st respondent pertaining to the proceedings common order in so far as Claim Petition No.129 of 2010, dated 30.04.2012 concerned, in respect of petition filed under section 33(C)(2) of Industrial Dispute Act, 1947, for directing the petitioners to pay the amount of Rs.2,44,493/- (Rupees Two Lakh Forty Four Thousand Four Hundred and Ninety Three only) to the 2nd respondent and to quash the same.

For Petitioners	: Mr. J. Senthil Kumaraiah
For R1	: Labour Court
For R2	: Mr. Mohamed Imran for M/s. Ajmal Associates

O R D E R

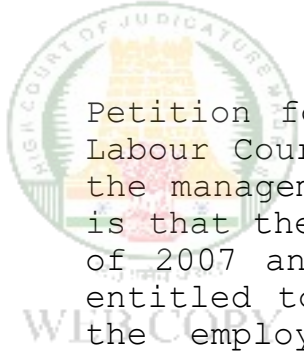
This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the common order in so far as Claim Petition No.129 of 2010, dated 30.04.2012 concerned, in respect of petition filed under section 33(C)(2) of Industrial Dispute Act, 1947, for directing the petitioners to pay the amount of Rs.2,44,493/- (Rupees Two Lakh Forty Four Thousand Four Hundred and Ninety Three only) to the 2nd respondent and to quash the same.



2. The brief facts of the case are that the second respondent was appointed as Driver on 01.12.1979. On 24.08.2000, while driving the Bus, the second respondent hit a lorry which was coming from the opposite direction, due to rash and negligent driving, in which the second respondent sustained grievous injuries. The management referred the second respondent to the Regional Medical Board to ascertain the evidence of the second respondent and the Board has issued not fit certificate. Hence, the Transport Corporation discharged the second respondent from service on 05.02.2002. The second respondent submitted a petition to settle all the terminal benefits. Accordingly, the management settled the one month notice salary, gratuity, PF contribution and Institute of Road Transport and Technology Engineering College and Medical College Contribution to the second respondent. Thereafter, the second respondent filed a Writ Petition in W.P.(MD)No.10034 of 2007, praying to reinstate him with continuity of service, back wages and to provide alternative job and the High Court has allowed the Writ Petition on 07.12.2007 and directed the management to reinstate and provide alternative employment. Aggrieved over the same, the management preferred a Writ Appeal in W.A.(MD)No.663 of 2008 and the Division Bench dismissed the Writ Appeal on 29.10.2008.

3. In the meanwhile, the second respondent preferred a Contempt Petition in Cont.P. (MD)No.205 of 2009 and the management submitted a cheque for an amount of Rs.1,04,347/- and issued a reinstatement order to the second respondent with continuity of service and back wages on 12.02.2009 and also provide the alternative employment as Non-ITI Helper the second respondent. After receiving the office order, the second respondent refused to join duty at Thiruparankundram Branch and he was continuously absent on duty from 12.02.2009 till the date of dismissal. Hence, disciplinary proceedings was initiated against the second respondent and finally, dismissed him from service on 29.06.2011. The second respondent filed a claim petition in C.P.No.129 of 2010, praying to issue orders directing the Transport Corporation to pay Rs.5,95,089.20/- with 12% interest from 10.02.2009 to till date of payment. The management filed a detailed counter affidavit and finally, the first respondent accepting the contentions of the parties passed an award on 30.04.2012 in favour of the second respondent and further directed the Transport Corporation to pay a sum of Rs.2,44,493/-. Aggrieved over the said order, the present Writ Petition is filed.

4. While admitting this Writ Petition, this Court has granted an interim order of stay and the second respondent preferred a vacate stay petition in W.M.P.(MD)No.5271 of 2018. The second respondent stated that the averment that he refused to join and continuously absent from 12.02.2019 is false. Since he was dismissed on 29.06.2009, the approval filed by the petitioner management was dismissed and therefore, the he is deemed to be in service from the date of retirement. Therefore, he filed a Claim



Petition for the said period with interest and on 30.04.2012, the Labour Court passed an order in favour of the employee and directed the management to pay Rs.2,44,493/-. The contention of the employee is that the claim of the management was rejected in W.P.(MD)No.10034 of 2007 and W.A.(MD)No.663 of 2008 and therefore, the employee is entitled to back wages. As per the calculations of the management, the employee is entitled to receive Rs.5,95,089.20/- and the management unlawfully deducted towards interest to a sum of Rs.2,44,493/-. The deductions made by the management are unlawful, against the order of the Court and there is no provision in the gratuity or PF rules to deduct interest. On the other hand, the management has not paid the back wages with interest. Therefore, the employee has filed the vacate stay petition along with the counter affidavit.

5. Heard Mr.J.Senthil Kumaraiah, learned Counsel appearing for the petitioners and Mr.Mohamed Imran, learned Counsel appearing for the second respondent.

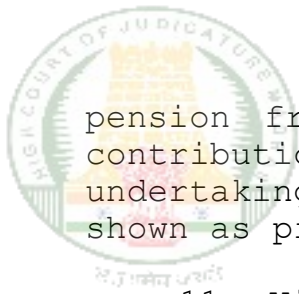
6. The management relied on Part IV - Contributions of Tamil Nadu State Transport Corporation EPET Rules. Under 10 B, it is stated that the STUs shall pay the contribution to the Trust on monthly basis of 12% of the annual Basic plus DA paid to the employees or at the rates that may be revised by the Government from time to time. Under Rule 16F it is stated that the employer has to pay his contribution along with interest.

7. Under Rule 10 A Sub Clause 4 it is stated that any non-refundable advance drawn by the member out of employer contribution upto the date of implementation of the Scheme along with the interest at 12% compounded annually. Based on these two rules, the management is claiming the contribution along with 12% interest ought to be paid by the second respondent in order to grant pension.

8. The contention of the management is that if any payment is made as employer contribution due to any order or judgment or belatedly, the same would be paid with 12% interest. Likewise, if any contribution from the employee is not deducted or belatedly deducted based on the Court orders, then the same would be collected along with 12% interest and this is followed for all the cases and the second respondent cannot be treated differently and the employee cannot claim exemption from such payment.

9. At this juncture, the learned Counsel appearing for the employee submitted that the employee is ready and willing to accept the employer contribution being paid as pension.

10. Therefore, this Court is directing the employer to pay from his contribution alone. The employee's contribution need not be collected and the employee need not pay any interest to the tune of Rs.2,44,493/-. Therefore, the management is directed to pay the



pension from the available amount, which was paid as employer's contribution. This order is passed based on the undertaking/willingness of the employee and this order cannot be shown as precedent for any other case.

11. With the above observation, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Vacation Officer/
Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

- 1.The Presiding Officer,
Labour Court, Madurai.
- 2.The Managing Director,
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Bye- Pass Road, Madurai.
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