

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.23580 & 25021 of 2018

and

W.M.P.(MD)Nos.14627 & 21380 of 2018

In W.P.(MD)No.23580 of 2018

The Management,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Madurai Region,
Bye-pass Road, Madurai-625 006.

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
O/o. Commissioner of Labour,
Teynampet,
Chennai-600 006.

2.K.Kannan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the first respondent in his proceedings in Approval Petition in A.P.No.59/2015, dated 25.07.2018 and quash the same.

For Petitioner : Mr.J.Senthilkumariah

For R1 : Mr.N.Satheesh Kumar

For R2 : Mr.A.K.Thangavelu

In W.P.(MD)No.25021 of 2018

K.Kannan

... Petitioner

Vs.

1.The Management of Tamil Nadu State
Transport Corporation Ltd.,
Rep. by its Managing Director,
Bye Pass Road, Madurai-625 016.

2.The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Madurai Region, Bye Pass Road,
Madurai-625 016.

3.The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar Illam,
Pallam Salai, Chennai-600 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to pay the petitioner's arrears of wages and all other consequential benefits for the period from 26.03.2015 to 31.05.2015 by taking as if he continued in service and retired from service on 31.05.2015 on reaching the age of superannuation as per the order passed in A.P.No.59 of 2015 dated 25.07.2018 by the Special Joint Commissioner of Labour, Chennai and also settle his terminal benefits amount payable to him including P.F., Gratuity, Commuted value of Pension, Social Security amount and refund amount of I.R.T along with the pensionary benefits together with 18% interest per annum within the time frame that may be fixed by this Court.

For Petitioner : Mr.A.K.Thangavelu
For R1 & R2 : Mr.J.Senthil Kumariah
For R3 : no appearance

COMMON ORDER

Heard the learned counsel on either side.

2. One Thiru.K.Kannan joined TNSTC in the year 1985 as driver. In the year 2015, the Management received information that the petitioner had furnished bogus educational certificate while obtaining employment. Based on the same, the charge memo was issued and enquiry was also conducted. Finally, vide order dated 26.03.2015, Kannan was dismissed from service. The Management moved the Joint Commissioner of Labour, Chennai seeking approval under Section 33(2)(b) of the Industrial Dispute Act, 1947. After conducting an enquiry, by the impugned order dated 25.07.2018, approval was rejected. Questioning the same, the employee filed W.P.(MD)No.25021 of 2018 seeking payment of arrears and other consequential benefits. The management filed W.P.(MD)No.23580 of 2018.

3. The Joint Commissioner of Labour had declined to grant approval sought for by the Management on the only ground that the workman was not paid wages for one month. It is seen that the Management had paid a sum of Rs.23,347/- for the month of March 2015. According to the workman, he must have been paid Rs.34,694/-.

4. My attention is drawn by the learned standing counsel to the order dated 03.02.016 in W.P.(MD)Nos.33497 & 33505 of 2015. A learned Judge of this Court held that if there was any calculation mistake or any other error, the Management ought to have been granted an opportunity to make good the deficit. What is important to be seen is as to whether the mandatory requirement under the aforesaid provision was complied with before seeking approval of the order of termination. In this case, the Management was not granted such an opportunity. The Management should have been allowed to place the materials to show that the amount paid by them represented the wages for one month for the employee. The competent authority had straight away accepted the version of the workman. On this ground ie, non-grant of opportunity to the Management to demonstrate that it did pay one month wages, the order impugned in the writ petition is quashed. The matter is remitted to the file of the competent authority to pass order on merits and in accordance with law. Such an order will be passed within a period of three months from the date of receipt of a copy of this order. Before passing the order, due opportunity will be granted to the Management to demonstrate that there was full compliance with the requirement of the statutory provision. The Management also may be given an opportunity to make good the deficit. Only thereafter, final order will be passed by the competent authority. The

Management will be entitled to this indulgence only if it pays the following amounts due to the employee:-

(I) Wages payable to the workman from the date of dismissal till the date when he attained the age of superannuation.

(II) Provident fund dues

(III) Gratuity

This amount shall be paid by the Management within a period of eight weeks from today.

5. The Writ Petition (MD)No.23580 of 2018 is allowed. The Writ Petition (MD)No.25021 of 2018 is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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