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W.A. No. 1267 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 1267 of 2023

&

C.M.P. Nos. 12649 & 12650 of 2023

M/s. Ampa Sky Walk

represented by its

Manager (Legal)

M. Rajasekhar,

EVR Periyar Salai,

Nelson Manickam Road,

Chennai – 600 029.

(Accepted the cause title vide order of

Court dated 01.06.2023 made in

C.M.P. No. 8565/2023 in W.A.SR.

No. 7927/2023 (SVNJ & KRSJ))

..Appellant

Vs.

A. Gajapathy (Died)



W.A. No. 1267 of 2023

2. G. Jayalakshmi
3. G. Bharathkumar
4. G. Sandhya
5. A. Jayalakshmi

(R2 to R5 are brought on record as LR's
of deceased 1st respondent viz.
A. Gajapathy vide order of Court dated
11.07.2023 made in C.M.P. Nos. 14851,
14991 & 14993 of 2023 in W.A. No. 1267
of 2023 (SVNJ & KRSJ))

..Respondents

Prayer: Writ Appeal as against the order dated 08.08.2022 passed in
W.P. No.20059 of 2019.

For Appellant :: Ms. Elizabeth Ravi

For Respondents :: Ms.S. Rajeni Ramadass
for M/s. Rajeni Associates for
R2 to R5

J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

The writ appeal is directed against the order dated 08.08.2022 passed
in W.P. No.20059 of 2019.



W.A. No. 1267 of 2023

2. The 1st respondent/workman (since deceased), who was a differently abled person, was appointed as a Lift Operator on 28.12.2012 by the appellant Management and his services were confirmed on 29.06.2013. While so, according to the workman (since deceased), he was asked by one Dilip Kumar, Manager of the appellant to tender resignation stating that it was the Management's decision and the workman (since deceased) had also tendered his resignation on 20.02.2016. Thereafter, the workman (since deceased) submitted a representation to the Conciliation Officer setting out the circumstances as to how he was forced to resign. As no settlement could be arrived at, a failure report was submitted and thereafter, the workman (since deceased) raised an industrial dispute before the Additional Labour Court, Chennai in I.D. No. 206 of 2017. The Labour Court, by award dated 28.03.2019, set aside the termination of the services of the workman (since deceased) pursuant to his resignation and held that the workman (since deceased) was entitled to reinstatement with backwages, continuity of service and other attendant benefits excluding the period of gainful employment for a period of six months. Challenging the said order, the appellant Management filed the writ petition and by the order under



W.A. No. 1267 of 2023

challenge, the writ petition came to be disposed of by the learned Single

Judge with the following directions:

"22. Except this modification, this Court do not want to interfere with the impugned award passed by the Labour Court. In the result, the following orders are made in this writ petition:

1. That the impugned award in both the writ petition are hereby sustained except with the modification that the backwages payable to the respondent workmen shall be only 50% and not full backwages.

2. Insofar as the said backwages of 50% is concerned which shall be calculated and paid to the respondent workmen after reinstating them in the job they already held, i.e, lift operator in the petitioner Management, the needful as indicated above shall be undertaken by the petitioner Management within a period of six weeks from the date of receipt of a copy of this order.

3. Insofar as the backwages from the date of award is concerned, the respondent



W.A. No. 1267 of 2023

employees are entitled to get full backwages."

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Assailing the said order, the writ appeal has been preferred by the Management.

3. During the pendency of the writ appeal, the workman died and his legal heirs were brought on record as respondents 2 to 5 vide order of this Court dated 11.07.2023.

4. When the matter is taken up for hearing today, it is represented by the learned counsel for the Management that the Management is willing to extend the monetary benefits due to the employee till the date of his death and hand over the amount to the wife of the deceased employee.

5. Learned counsel for the respondents is also agreeable for the payment of the entire amount due in terms of the order of the learned Single Judge, extracted supra, to the wife of the deceased employee.



W.A. No. 1267 of 2023

WEB COPY

6. In view of the concession made on either side, this Court is not inclined to go into the factual details of the case.

7. Accordingly, the arrears of wages payable to the deceased employee shall be calculated and paid in lumpsum to the wife of the deceased employee and it shall be spread over for a period from the date of dismissal till the date of death of the employee. Insofar as EPF contribution is concerned, the employer shall pay their contribution and also deduct the employee's share upto the date of death and remit the same to the Provident Fund. We make it very clear that the PF amount shall be paid with interest as per the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Since the wages are now determined and payable, no damages can be levied. 50% of the interest payable on Provident Fund amount shall be borne by the family of the deceased as neither the employee nor the employer can be blamed for the pendency of the matter before this Court. The employer shall pay gratuity, if applicable, in terms of Payment of



W.A. No. 1267 of 2023

Gratuity Act, 1972. The payment to be made by the Management shall be done within a period of four months from the date of receipt of a copy of this order. The writ appeal stands disposed of. No costs. Connected C.M.Ps are closed.

nv

(S.V.N.J.) (K.R.S.J.)
26.07.2023



WEB COPY



W.A. No. 1267 of 2023

S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.

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W.A. No.1267 of 2023

26.07.2023