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W.A.No.373/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-04-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.373 of 2023

L.Muniraja

...

Appellant

-VS-

1.The Management,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai – 600 002.

2.The Special Deputy Commissioner of Labour,
D.M.S. Office,
Teynampet,
Chennai- 600 006.

...

Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order,
dated 25.11.2022, passed in W.P.No.13849 of 2017, on the file of this Court.

For Appellant : Mrs.M.D.Leelavathi

For Respondent 1 : Mr.R.Ramanlal,
Addl.Advocate General,
assisted by Mr.C.Gauthamaraj.



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For Respondent 2 : Mrs.C.Sangamithirai,
Spl.Govt.Pleader.

JUDGMENT

(By *S.Vaidyanathan,J.*)

This appeal has been preferred by the employee, challenging the order of the learned single Judge, dated 25.11.2022, passed in W.P.No.13849 of 2017, setting aside the order of the authority under the Industrial Disputes Act,1947, rejecting the Approval Petition No.150 of 2014, by an order dated 09.05.2016.

2. The appellant employee joined the services of the respondent management on 01.04.1996 and was dismissed by an order, dated 26.05.2014.

3. According to the respondent management, the employer has fulfilled all the principles laid down in the decision of the Apex Court in *Lalla Ram v. D.C.M. Chemical Works Ltd.*, 1978 (3) SCC 1; that the learned single Judge was right in setting aside the order of the authority and that the authority was wrong in taking a mechanical decision that the inquiry report was not available and the charges were not proved. It is further contended that even assuming that the inquiry report was not available, the matter needs to be sent back to the authority for fresh consideration and, therefore, in the case on hand, the order of the learned single Judge was correct in interfering with the order of the authority.



4. On the other hand, the contention of the appellant employee is that the order of the learned single Judge in setting aside the order of the authority is incorrect and that the entire wages have not been paid.

5. The entire issue in this case revolves around the point of non-payment of Dearness Allowance.

6. For the sake of convenience, Section 2 (rr) of the Industrial Disputes Act, 1947, which defines the term "wages", is extracted below :

"2[(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both; but does not include- (a) any bonus; (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force; (c) any gratuity payable on the termination of his service."



7. It is contended by the respondent management that the appellant employee was absent from duty from 23.11.2012 and that the wages payable as on that date were Rs.18,243/-, which were paid.

8. Admittedly, G.O.Ms.No.96, dated 03.04.2014, was issued revising the Dearness Allowance from 01.01.2014 and the said G.O.was effective when the appellant employee was dismissed from service. The contention that the date of suspension has to be taken for the purpose of payment of one month's wages cannot be accepted.

9. Employer-employee relationship continues till an order is passed by the authority under Section 33 (2) (b) of the Industrial Disputes Act,1947, even though the employer has passed the order. In case the employer's order is approved by the authority, it takes effect from the retrospective date i.e., the date of dismissal order passed by the employer.

10. In the case on hand, on the date of dismissal, G.O.Ms.No.96, dated 03.04.2014, was available and there was a shortfall of payment of Dearness Allowance, which formed part of the wages payable to the employee in terms of Section 2 (rr) read with Section 33 of the Industrial Disputes Act. Hence, the order of the learned single Judge in setting aside the order of the authority is set aside.

11. During the course of hearing, learned counsel for the appellant



employee has submitted that the employee is willing to give up 50% of the back-wages from the date of termination i.e., from 26.05.2014 till the date of his superannuation i.e., 31.05.2019. Since the order of the authority has been restored, the employer must continue the employer's and the employee's share to the Provident Fund Trust on the entire wages. However, it is sufficient if the employee is paid 50% of the back-wages and that no amount shall be adjusted from 50% of the back-wages, while contributing towards Provident Fund. In the light of the decision of the Supreme Court in *Tamil Nadu State Transport Corporation v. Neethivalangan, Kumbakonam*, 2001 (9) SCC 99, the employer has to implement the order within a period of four weeks from the date of receipt of a copy of the order. If the amount of 50% back-wages, mentioned supra, is not paid within the time stipulated above, it will fetch interest at 12% per annum from 01.05.2023. The interest amount shall be paid first and can be recovered from the officers, who are responsible to comply with the orders of this Court, in the light of the decision of the Supreme Court in *Central Co-operative Consumers' Store Ltd. v. Labour Court, H.P. at Shimla and another*, 1993 (3) SCC 214. The appellant employee is also entitled to continuity of service and all the terminal benefits, such as, Pension, Gratuity etc., which shall be paid within a period of four months from the date of receipt of a copy of this order.



12. Appellant is also present before this Court and has filed an affidavit, that is scanned below, forgoing 50% of the back-wages from the date of termination till the date of superannuation. The affidavit reads as under :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Appellate Jurisdiction)

W.A No. 373 of 2023

L.Muniraja,
No.35/1, Valaiyarkarar Street,
Saidapettai,
Vellore
Pin Code - 632 012.

-Vs-

..... Appellant

- 1) The Management
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai- 600 002.
- 2) The Special Deputy Commissioner of Labour,
D.M.S Office,
Teynampet,
Chennai- 600 006.

..... Respondents

AFFIDAVIT FILED BY L.MUNIRAJA

I , L.Muniraja, son of K.Lakshmipathi, aged about 61 years, residing at No.35/1, Valaiyarkarar Street, , Saidapettai, Vellore —632, 012, temporarily come down to Chennai, do hereby solemnly affirm and sincerely state as follows:

1. I am the Appellant herein in the above Writ Appeal, as such I am well acquainted with the facts and circumstances of the case.

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2. I submit that, I was joined into the Respondent / Management Transport Corporation as a conductor EDP No.25192 on 01.04.1996.
3. I submit that the facts are being so, November 2012, I was affected by peptic disorder, low back ache with Acid peptic order and undergone operation to remove the stone. However the Respondent / Management without considering the facts terminated me from service by an order dated 26.05.2014. During the time, Common Demand issue was pending before the Labour Commission Authority. Hence the Management sought an approval before the Learned Labour Authority in A.P No.150 of 2014. After full trial the Learned Labour Authority rejected the Approval Petition A.P No.150 of 2014 and refused to grant approval by order dated 09.05.2016.
4. I submit that aggrieved by the Approval Petition order, the Respondent / Management has preferred an appeal in W.P No.13849 of 2017 and the same was allowed by the Hon'ble High Court, order dated 25.11.2022 by quashing the Approval Petition order and directed to remand back the issue for fresh adjudication. Further I submit that during the pendency of the Writ Petition, I have attained the age of superannuation i.e on 31.05.2019.
5. I submit that, aggrieved by the Writ Petition order, I preferred this Writ Appeal in W.A No.373 of 2023 before the Hon'ble Divisional Bench for justice. The matter has came up for hearing on 27.04.2023, during the time I agree to forego 50% in my entitled back wages alone (from the date

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of termination i.e from 26.05.2014 to till the date of my superannuation dated 31.05.2019) without prejudice to the other Terminal benefits including my family pension etc.

Therefore it is humbly prayed that this Hon'ble Divisional Bench may be pleased to accept this Affidavit as part and parcel of this matter and the Writ Appeal may be pleased to allow and thus render justice.

Solemnly affirmed at Chennai
On this the 28th day of April 2023
And signed his name in my presence.

L. Muniraja
Before me,
T. KARKKIVELAN
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Advocate, Chennai -1

13. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.No.3608 of 2023 is closed.

Index : Yes/No
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(S.V.N.,J.) (R.K.M.,J.)
28-04-2023
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To

1.The Management,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai – 600 002.



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W.A.No.575/2023

2.The Special Deputy Commissioner of Labour,
D.M.S. Office,
Teynampet,
Chennai- 600 006.



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W.A.No.373/2023

S.VAIDYANATHAN,J.
AND
R.KALAIMATHI,J.

dixit

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