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W.P.No.4945 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.4945 of 2020 and
W.M.P.No.5851 of 2020

The Management,
Tamil Nadu Government Transport Corporation,
(Kovai Division) Kovai Ltd.,
37, Mettupalayam Road,
Coimbatore - 641 043.

... Petitioner

Vs.

S.Prakash

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, to call for the records in C.P.No.31 of 2018 on the file of the Additional Labour court, Coimbatore, dated 25.10.2019 and quash the same.

For Petitioner : Mr.T.Chandrasekaran

For Respondent : Ms.V.Prokodi,
for Mr.R.Krishnaswamy

ORDER

Challenging the Award passed by the Additional Labour Court, Coimbatore in C.P.No.31 of 2018, dated 25.10.2019, the present Writ petition is filed.



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2. The respondent was working as a driver in the Writ Petitioner Management. On 03.01.2018, he drove a bus bearing Registration No.TN 38 N 2574 in a rash and negligent manner and hit a two wheeler bearing Registration No.TN 43 E 6055, as a result of which, the rider of the two wheeler fell down and died on spot. Hence, the respondent was placed under suspension on 04.01.2018. Subsequently, the Management directed the respondent to report for duty on 02.02.2018 by pasting the proceedings in the notice board of the office. However, the respondent did not report for duty. According to the respondent, he came to know about the said proceedings only on 14.05.2018 when a charge memo was served on him and that he reported for duty on the next day i.e., on 15.05.2018. His grievance is that though the Management paid the subsistence allowance from 04.01.2018 to 02.02.2018, failed to pay the same for the period from 02.02.2018 to 15.05.2018. Hence, he filed a petition under Section 33C(2) of the Industrial Disputes Act in C.P.No.31 of 2018 before the Additional Labour Court, Coimbatore. The Presiding Officer, Labour Court vide his orders dated 25.10.2019, quantified the amount payable to the respondent as Rs.23,495/- based on



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the evidence on record. Aggrieved over the said orders, the present Writ petition is filed by the Management.

3. Mr.T.Chandhrasekaran, learned counsel for the petitioner/Management contended that since there is no pre-existing right as the respondent did not approach the controlling Authority for payment of subsistence allowance, the Computation Petition filed before the Labour Court is not maintainable. His further contention is that the petitioner Management is liable to pay subsistence allowance only from 04.01.2018 to 02.02.2018 and this amount has already been paid by them.

4. Per contra, Ms.V.Porkodi, learned counsel appearing for the respondent workman contended that the Labour Court after analysing the oral and documentary evidence on record, has passed a well reasoned order and there is no ground for this Court to interfere with the same. Her further contention is that the Labour Court had also come to the



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conclusion that the Management had failed to communicate the interim orders passed by them, directing the respondent to join duty on 02.02.2018 in the manner known to law. He, therefore, prayed for dismissal of the Writ Petition.

5. A perusal of the records shows that the Computation Petition in C.P.No.31 of 2018 was filed praying for subsistence allowance for the period from 03.02.2018 to 14.05.2018. The respondent was placed under suspension on 04.01.2018. However, the petitioner Management directed the respondent to join duty on 02.02.2018. This has not been properly communicated to the respondent / workman and on the contrary the contention of the petitioner management is that it was pasted in the Notice Board. Subsequently, a charge memo was served on him on 14.05.2018 and in the said charge memo, there was a reference about the interim orders passed by the petitioner Management, directing the respondent to join duty on 02.02.2018. The respondent after coming to know of the said fact, immediately joined duty on 15.05.2018. In the circumstances, it was rightly held that the respondent was in deemed



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suspension from 03.02.2018 to 04.04.2018 as he was not properly communicated the order of reinstatement.

6. As far as the maintainability is concerned, it cannot be stated that there is no pre-existing right. As per proviso to Section 15 (d)(i) and 15 d (ii) of the Standing Certified Orders, the respondent is entitled to get 50% subsistence allowance from the date of his suspension period till the date of his reinstatement. In the instant case, he was not paid subsistence allowance from 03.02.2018 to 04.04.2018 and this amount has been quantified by the Additional labour Court, Coimbatore as Rs.23,495/-. The Labour Court, had actually gone into all the aspects of the case while passing orders on 25.10.2019 and I do not find any reason to interfere with the same. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.12.2023

Index: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.

vum

To

The Additional Labour court, Coimbatore.

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