



WEB COPY



W.P. No. 13435 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

**W.P. No. 13435 of 2018
and W.M.P. No. 15830 of 2018**

The Management
Metropolitan Transport Corporation
(Chennai) Ltd,
Pallavan Illam, Anna Salai, Chennai-2.

... Petitioner

-VS-

1. The Presiding Officer
III Additional Labour Court
City Civil Court Annexure Building,
High Court Compound, Chennai-104

2. L.Harikothandam (DECEASED)

3. SASIKALA

4. H.DINESH
S/o. Late. L.Harikothandam
No.64 E New No.117,
Periya Maniyakkara Street,
Chengalpet- 603 001.

(R3 R4 SUBSTITUTED AS LR's OF DECEASED SECOND RESPONDent
VIDE ORDER DATD 02.03.2023 MADE IN WMP.NO.2122 OF 2023 IN
WP.NO.13435 OF 2018 BY THIS COURT)

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari Calling for the records pertaining to



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the Order passed in C.P.No.156 of 2014 dated 2.1.2018 on the file of the 1st respondent herein and quash the same.

For Petitioner : Mr. M.Chidambaram

For Respondents : Mr. R.Megesh, Legal Aid Counsel
RR1 to 4

ORDER

The Writ Petition has been filed against the Order passed in C.P.No.156 of 2014 dated 2.1.2018 on the file of the 1st respondent herein.

2. The facts of the case are as follows:-

The second respondent was appointed as a Driver in the petitioner Corporation and he was terminated from service on 08.05.2001 due to disciplinary proceedings. The second respondent challenged the termination order by raising ID No.372 of 2003 and it was ordered directing reinstatement without any backwages. After rejoining duty, the second respondent made a claim petition No.156/2014 claiming salary of Rs.67,500/- for the period from 04.12.2008 to 20.05.2009 and for Rs.1,80,000/- for the period from 20.05.2009 to 31.07.2012 totalling to Rs.2,47,000/- Without considering the entire facts, the first respondent has passed an award dated 02.01.2018 and directed the petitioner to pay a sum of Rs.2,47,000/- to the first respondent. Challenging the said order, the present writ petition has been filed.



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3. The learned counsel for the petitioner submitted that admittedly the Labour Court has passed award directing the petitioner to reinstate the second respondent into service. After joining duty, the second respondent made a claim petition before the first respondent claiming salary for the non employment period and the same was ordered in favour of the second respondent. The first respondent failed to note that the second respondent cannot compare his salary along with other co-employee, Kasi who was a genuine employee, who earned all the annual increments without omission, and therefore, the present order is not sustainable. Accordingly, the impugned order passed by the first respondent is liable to be allowed and the writ petition is allowed.

4. The learned counsel for the respondents 2 to 4 submitted that the second respondent joined the petitioner Corporation as Driver on 13.08.1981 and on 22.01.2001, the second respondent was dismissed from service. Subsequently, as directed by the Labour Court, the second respondent was reinstated into service. After reinstatement, the petitioner was paid a sum of Rs.10,000/- per month. Whereas the other similarly placed employees who were junior to the petitioner were paid Rs.15,000/- per month. Hence, the petitioner is entitled for balance of Rs.5,000/- per month from 20.05.2009 till the date of superannuation on 31.07.2012 and the same was ordered directing the



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petitioner to pay such amount of Rs.2,47,000/- which is perfectly in order and the same cannot be interfered with. The learned counsel for the respondent submitted that during pendency of this petition, the second respondent died and his legal heirs have impleaded as respondents 3 and 4.

5. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

6. A careful perusal of the materials available on record reveal that the Labour Court had carefully considered all the contentions in the light of the documents placed before it. The ground on which the petitioner had challenged the computation as impermissible is due to the fact that the person, who has been show as similarly placed is senior to the second respondent and further, the 2nd respondent had suffered punishment, which is not the case with the similarly placed person and, therefore, equating both is impermissible.

7. However, answering the aforesaid contentions, the Labour Court had given a finding that the seniority of the similarly placed person is merely two days in service prior to the 2nd respondent and further the punishment, which is put against the 2nd respondent, having been set aside by the Labour Court in the



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industrial dispute raised by the workman, it goes without saying that there is no stigma attached to the workman on account of the said punishment, which stood erased from his service record and, therefore, the 2nd respondent is equatable to the similarly placed person. Further, contra to the aforesaid position, no documents have been marked by the petitioner/Management to disentitle the 2nd respondent of the claim made by him. That being the case, the Labour Court had gone on to hold that fixing a fresh pay for the 2nd respondent is not permissible, as in the industrial dispute, the 2nd respondent has been directed to be reinstated, which squarely means that it is not a fresh appointment, but a continuity of the services rendered by the 2nd respondent.

8. That being the position, as evident from the discussion of the Labour Court, leading to the present finding, this Court is of the considered opinion that from the date the 2nd workman is directed to be reinstated by order of the Labour Court, the benefits should flow to the 2nd respondent and it cannot wait the directions/approval of the Board and to that extent the 2nd respondent is entitled to the payment for five months and further the fixation of a lesser sum of Rs.5,000/- than the similarly placed person is also to be paid to the petitioner considering his equivalency in service. Further, it is to be pointed out that once a judicial order has come to be passed in favour of the workman, no board or any



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authority, except the higher judicial forum has power to sit over the decision and pass further orders and the stand of the petitioner in this behalf is wholly flawed. Therefore the Labour Court had rightly adjudicated the computation petition and had ordered payment of Rs.2,47,000/-. The Labour Court has discussed the issue threadbare and has given a finding directing payment of a sum of Rs.2,47,000/- to the 2nd respondent, payable to his legal heirs upon his death, which cannot be interfered with.

9. In the result, the writ petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Rli

Index: Yes/No

NCS : Yes/No

To
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M.DHANDAPANI, J.

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