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W.P.Nos.42451 of 2016 & 7889 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.Nos.42451 of 2016 & 7889 of 2017

W.P.No.42451 of 2016

The Management,
Tamil Nadu State Transport Corporation
(CBE) Limited, Rep. by its Managing Director,
No.37, Mettupalayam Road, Coimbatore – 641 043. ... Petitioner

Vs.

- 1.The Appellate Authority,
Under the payment of Gratuity Act/
The Joint Commissioner of Labour,
Coimbatore.
- 2.The Controlling Authority,
Under the payment of Gratuity Act/
The Assistant Commissioner of Labour,
Coimbatore.

3.M.Arunagirinathan ... Respondents

W.P.No.7889 of 2017

M.Arunagirinathan ... Petitioner's

Vs.



W.P.Nos.42451 of 2016 & 7889 of 2017

1.The Appellate Authority,
Under the payment of Gratuity Act/
The Joint Commissioner of Labour,
Coimbatore.

2.The Management,
Tamil Nadu State Transport
Corporation (CBE) Limited, Rep. by its
Managing Director, No.37, Mettupalayam
Road, Coimbatore – 641 043.

... Respondents

Prayer in W.P.No.42451 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the order dated 05.07.2016 passed by the 1st respondent in A.G.A.No.140 of 2016 and order dated 03.12.2014 made in G.A.No.54 of 2014 on the file of 2nd respondent and quash the same.

Prayer in W.P.No.7889 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 05.07.2016 passed by the 1st respondent in A.G.A.No.140 of 2016, quash the same in so far setting aside the order of the Controlling Authority dated 03.12.2014 made in G.A.No.54 of 2014 relating to the direction for payment of interest and consequently, direct the 2nd respondent to pay the petitioner interest as per the order of the Controlling Authority along with the Gratuity Amount, Award costs.

W.P.No.42451 of 2016

For Petitioner : Mr.A.Sundaravadanam
for M/s.K.J.Sivakumar

For Respondents : Mr.V.Ajoy Khose [R3]



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W.P.No.7889 of 2017

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For Petitioner : Mr.V.Ajoy Khose

For Respondents : Court [R1]

Mr.A.Sundaravadanam [R2]

COMMON ORDER

Though the above writ petitions were listed as different matters in the cause list, since the issue involved in both the writ petitions being one and the same, with the consent of the learned counsel appearing for both sides, these writ petitions were heard together and disposed of by this common order.

2. The petitioner in W.P.No.42451 of 2016 is hereinafter called as workman and the petitioner in W.P.No.7889 of 2017 is hereinafter called as Corporation.

3. The workman joined the services of the Corporation as a Conductor on 29.05.1976 and after rendering 37 years of service, he retired from service on 30.06.2013 on reaching the age of superannuation. Thereafter, the workman filed a petition before the Controlling Authority



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in G.A.No.54 of 2014 for payment of gratuity as the gratuity amount was not paid as per the last drawn wages. The Controlling Authority allowed the petition filed by the workman and directed the Corporation to pay a sum of Rs.3,78,671/- towards gratuity within 30 days, failing which, 10% simple interest, against which, the Corporation preferred an appeal before the Appellate Authority in A.G.A.No.140 of 2016 and the Appellate Authority confirmed the findings of the Controlling Authority with regard to total qualifying service and the computation and order for payment of gratuity for 37 years, however, set aside the order of the Controlling Authority, insofar as the direction for payment of interest for the belated payment. Thereby, both the authorities have concurrently held against the Corporation. Challenging the order passed by the Appellate Authority, the above writ petitions have been filed before this Court.

4. The learned counsel for the Corporation submitted that, already they have filed a detailed counter before the Controlling Authority stating that out of the total service of 37 years, in which, the non qualifying service is 18 years and 6 months, hence, the total qualifying service of the workman is 18 years, 17 months and 2 days, which is approximately 19



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years. However, without considering the same, the controlling authority as well as the appellate authority have passed award as if the entire qualifying service of the workman is 37 years, 1 month and 2 days, which is not sustainable. Accordingly, he prays for appropriate orders.

5. The learned counsel appearing for the workman submitted that, the workman entered the services of the Corporation in the year 1976 and retired in the year 2013. During his employment, no punishment was imposed against the workman. In the absence of any punishment order or declaring the non qualifying service by passing any order, the Corporation claimed that there was non qualifying service for 18 years, which is not sustainable. By considering the above facts, the Controlling Authority as well as the Appellate Authority have passed award in favour of the workman, which is sustainable. Accordingly, he prays for dismissal of the writ petition in W.P.No.42451 of 2016.

6. Heard the learned counsel appearing for the Corporation as well as the workman and perused the materials available on records.



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7. Admittedly, the workman entered the services of the Corporation in the year 1987 as a Conductor and retired from service in the year 2013. After his retirement, he filed a petition before the Controlling Authority seeking gratuity and the same was allowed, against which, the Corporation preferred an appeal before the Appellate Authority and the Appellate Authority confirmed the award passed by the Controlling Authority by setting aside the interest awarded by the Controlling Authority.

8. It is evident from the records that, the Corporation has took a plea before the controlling authority that, out of the 37 years service rendered by the workman, the total qualifying service is 19 years. In order to prove the same, the Corporation has not produced any documents before the authorities. It is also evident from the records that, during the service of the workman, the Corporation has not passed any order for disqualifying the services of the workman. In the absence of any documents, claiming 18 years of non qualifying service of the workman by the Corporation is not sustainable. Considering the above aspects, the authorities have passed award in favour of the workman, which cannot be interfered with under Article 226 of Constitution of India, since the same does not suffer any



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perversity. Further, the workman challenged the order of the appellate authority with regard to setting aside of interest awarded by the controlling authority and the same cannot be re-appreciated by this Court, since the same was negated by the Appellate Authority.

9. Accordingly, these Writ Petitions are dismissed. However, liberty is granted to the workman to withdraw the award amount already deposited by the Corporation, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

24.07.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To

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Coimbatore.
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M.DHANDAPANI, J.

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