



W.P.No.20541 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

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

W.P.No.20541 of 2023

and

W.M.P.No.19925 of 2023

The General Manager,
Tamil Nadu State Transport Corporation,
Cuddalore Region,
Cuddalore – 1.

... Petitioner

Vs.

S.Premkumar

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the order passed by the Labour Court, Cuddalore dated 02.09.2021 passed in C.P.No.1 of 2018 and quash the same.

For Petitioner : Mr.M.Aswin

For Respondent : Mr.V.Logesh



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ORDER

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The impugned order dated 02.09.2021 made in C.P.No.1 of 2018 passed by the respondent is under challenge in the present Writ Petition.

2. The petitioner is the Management (Tamil Nadu State Transport Corporation). The respondent was appointed as Reserved Driver on 01.10.1997 in the petitioner Corporation and due to his unauthorised absence, he was issued with a charge memo dated 21.01.2012. After issuing the charge memo, the enquiry was conducted and he was removed from service on 16.12.2013. Thereafter, the petitioner Corporation filed an Approval Petition before the Special Deputy Commissioner of Labour, Chennai in A.P.No.363 of 2013 and the same was rejected by order dated 16.07.2015. The respondent has filed a Claim Petition under Section 33C(2) of the Industrial Disputes Act, 1947 (in short 'the Act') in C.P.No.1 of 2018 before the Labour Court, Cuddalore claiming gratuity and provident fund amount from the petitioner Corporation. The Labour Court directed the petitioner Corporation to pay the claim amount of gratuity and provident fund that the respondent is entitled to.



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However, before the Labour Court, the respondent has pointed out that he submitted his resignation letter on 24.08.2013 and that the petitioner Corporation in order to defer the payment of pensionary benefits, has removed him from service. The Labour Court found that the dismissal order dated 16.12.2013 is subsequent to the resignation of the respondent dated 24.08.2013. Therefore, declined to accord approval to the dismissal of the employee by order dated 16.07.2015 on the ground that the Approval Petition become infructuous, since the respondent has resigned his service by letter dated 24.08.2013. In the interregnum, the Petitioner Corporation has filed a Writ Petition in W.P.No.28808 of 2019 challenging the dismissal of the Approval Petition dated 16.07.2015, which was disposed of by this Court by order dated 30.09.2020. Thus, the date of completion of the employment of the employee was to be considered only on which the date the employee submitted his resignation, i.e., 24.08.2013. Based on the same, the respondent filed a claim petition in C.P.No.1 of 2018 before the Labour Court, Cuddalore.

3. After carefully considering the submissions made on either side and the exhibits marked by both the petitioner Corporation and the respondent, the



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Labour Court allowed the Claim Petition by directing the petitioner Corporation to pay a sum of Rs.5,81,806/- as gratuity and provident fund by an order dated 02.09.2021. Challenging the same, the present Writ Petition has been filed before this Court.

4. This Court at the time of admission of the Writ Petition on 12.07.2023 has granted interim stay on condition that the petitioner Corporation shall deposit 50% of the award amount in Claim Petition No.1 of 2018. Thereafter, when the matter was taken up for hearing on 26.07.2023, it was brought to the notice of this Court by the learned counsel for the petitioner that after passing of the award and prior to the filing of the Writ Petition, the petitioner Corporation has disbursed the amount to the respondent to the tune of Rs.1,98,819/- towards provident fund and Rs.1,58,460/- towards gratuity and the balance amount to be paid to the respondent is Rs.2,24,527/-, in which the petitioner Corporation has agreed to deposit 50%. Hence, this Court while modifying the interim order dated 12.07.2023, directed the petitioner Corporation to pay a sum of Rs.1,12,263/- i.e., 50% of the balance amount



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Rs.2,24,527/-, to the credit of C.P.No.1 of 2018 on the file of the Labour Court, Cuddalore.

5. The learned counsel for the petitioner by relying upon Section 16(e) of the Tamil Nadu State Transport Corporation Employees' Provident Fund Rules submits that the resignation from service or post entails forfeiture of past services and provided that the resignation shall not entail forfeiture of past service, if it has been submitted to take up with proper permission, another appointment, under Government Department / State Public Sector Undertaking / Board. In such case, the pensionary benefits shall be transferred to the New Employer's Pension Fund / EP Scheme 1995, as the case may be, and such benefits shall not be directly paid to the individual.

6. I have considered the submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

7. Admittedly, the respondent has resigned his service, thereby, the Labour Court did not grant approval to the Approval Petition dismissing the



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respondent from service. Therefore, pursuant to the impugned order passed by the Labour Court in the Claim Petition dismissing the approval petition, the respondent filed the claim petition under Section 33 C(2) of the Act claiming gratuity and provident fund and the said application was allowed by directing the petitioner to pay a sum of Rs.1,58,460/- towards gratuity and a sum of Rs.4,23,346/- towards provident fund. Admittedly, the entire gratuity amount as awarded by the Labour Court and the employee share towards provident fund of Rs.1,98,819/- was disbursed to the respondent and the said fact is not in dispute. Out of the employer share towards provident fund of Rs.2,24,527/-, the petitioner Corporation had already deposited a sum of Rs.1,12,263/- to the credit of C.P.No.1 of 2018 on the file of the Labour Court, Cuddalore by way of interim order of this Court dated 26.07.2023. Therefore, the balance amount to be disbursed to the respondent is Rs.1,12,263/-.

8. Considering the fact that though the Labour Court have no jurisdiction to entertain the application under the Payment of Gratuity Act under Section 33 C(2) of the Act for payment of gratuity as well as provident



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fund, however, major portion of the award amount was already disbursed by the petitioner Corporation to the respondent, the petitioner Corporation is directed to deposit the balance amount of Rs.1,12,263/- to the credit of C.P.No.1 of 2018 on the file of the Labour Court, Cuddalore within a period of two (2) weeks from the date of receipt of a copy of this order. On such deposit being made, the respondent is permitted to withdraw the amount lying in the credit of the claim petition within a period of two weeks thereafter.

9. With the above observations and directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No
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The Labour Court, Cuddalore.

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M.DHANDAPANI, J.

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