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W.A. Nos. 48 & 50 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. Nos. 48 & 50 of 2023

&

C.M.P. Nos. 471 & 475 of 2023

The General Manager (Administration),
Metropolitan Transport Corporation,
Pallavan House, Anna Salai,
Chennai – 600 002.

..Appellant in both Writ
Appeals

Vs.

1. G. Manivannan
2. The Presiding Officer,
II Additional Labour Court,
Chennai.
3. The Branch Manager,
Metropolitan Transport Corporation,
Ennore Work Depot,
Chennai – 600 057.

..Respondents in both



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Writ Appeals

Prayer: Writ Appeals as against the order dated 12.04.2022 in W.P.

Nos. 4859 of 2014 & 8659 of 2015.

For Appellant
in both appeals :: Mr. Ramanlal,
Addl. Advocate General
assisted by
Mr.C. Gauthamaraj

For Respondents
in both appeals :: Mr.V. Prakash,
Senior Advocate for
M/s.K.Krishnamoorthy
S. Viswanathan for R1

R2- Court

COMMON JUDGMENT

(Delivered by S. Vaidyanathan,J.)

Aggrieved by the order dated 12.04.2022 passed by the learned Single Judge in W.P. Nos.4859 of 2014 & 8659 of 2015, the present writ appeals have been preferred by the Transport Corporation.

2. The employee/1st respondent was terminated from service on 30.05.2006. An industrial dispute was raised and the Labour Court, by award dated 09.07.2013 in I.D. No. 290 of 2010 directed the Management



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to pay 25% of backwages apart from reinstatement and continuity of

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service. Aggrieved by the award of the Labour Court, the Management filed W.P. No.8659 of 2015 insofar as it granted reinstatement with 25% of backwages and the employee filed W.P. No. 4859 of 2014 insofar as it deprived 75% of backwages. The learned Single Judge, by the order under challenge, while confirming the award passed by the Labour Court, Chennai, in I.D. No. 290 of 2010, insofar as it granted reinstatement, modified the award with regard to denial of 75% backwages and instead, granted full backwages with continuity of service and other attendant benefits. Hence, the present writ appeals at the instance of the Management.

3. Heard the submissions of both parties.



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4. The main contention of the employee is that he is disabled and that the Medical Board has certified that he is unfit for driving a vehicle. In fact, this Court passed an interim order 04.04.2016 in W.P. No. 8659 of 2015 to the following effect:

“7. Accordingly, there will be a direction to the workman to appear before the Chief Civil Surgeon in the Hospital, attached to this Court on 18.04.2016 and the Doctor is requested to examine his health condition, and certify the nature of work, which he may be able to do. Based on such certificate, the Management of the Corporation shall afford him employment within a period of two weeks from the date on which, medical certificate is produced by the workman. It is made clear that the Management will not be entitled to test the correctness of the certificate issued by the Doctor, and the same shall be accepted by them as it is, for the time being, till the Writ Petition is heard and disposed of finally.”

In spite of the aforesaid orders passed by this Court, more so, in the light of Section 47(1) of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which contemplates that 'No establishment shall dispense with, or reduce in rank, an employee who



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acquires disability during his service', the employee was not given employment commensurate with status without reduction in pay. As a matter of fact, the employee has been reinstated only on 04.04.2023 after the interim order of this Court dated 07.03.2023 in the above writ appeals. According to the employee, he is entitled to wages upto 1st April, 2023 and thereafter, difference in wages to an extent of Rs. 53,73,379.60p. However, this is refuted by the employer by filing a statement stating that the employee would be entitled to a sum of Rs. 45 lakhs and odd.

5. This Court persuaded the parties to settle the matter so that the issue could be given a quietus insofar as arrears of wages is concerned and that the employee shall be paid wages on par with his counterparts.

6. Though Mr. Prakash, learned Senior Counsel has filed additional typed set of papers dated 20.07.2023 to contend that one Ramachandran, who is similarly placed like the petitioner is drawing more wages and that in terms of Section 47 of the Act mentioned supra, the



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employee concerned in this appeal should have been paid on par with his counterparts; that the employee was deprived of his employment in 2006 and in spite of the award of the Labour Court granting reinstatement with continuity of service, which has been confirmed by the learned Single Judge of this Court, the employee is yet to get the relief in full, the statement produced with regard to the counterpart of the employee would clearly prove that he had reached Special Grade as he had been working without any break. Though it has been contended by Mr. Prakash, learned counsel for the workman that non-employment of the workman concerned in this appeal is not due to his fault, we are not inclined to accept the same. The employee had absented himself on several dates from 1998 till 2006 and this cannot be regularised for the purpose of granting Special Grade. When there is absence, grant of Special Grade will have to be postponed as the employee will have to complete actual number of years of service and in case, the employee completed the required number of years of service excluding the absence during the period from 1998 to 2006, the employee will be granted notional pay on completion of actual number of years of service required in terms of rules/regulations.



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7. Since the employer has agreed to pay a sum of Rs. 30 lakhs, it will give a quietus to the entire issue. Upto the period 07.08.2023, the employer will have to pay EPF contribution to the trust without interest as the wages are being paid till today. There is no need to contribute employee's share and for the actual amount remitted by the employer, the Trust will have to take into account the benefits that may be extended to the employee including pension. It is open to the employee to contribute his share towards pension within a period of three months from the date of receipt of a copy of this order, from and out of the amount received, so that he can ensure better pensionary benefits at a later point of time. If the employee wants to pay his share after 3 months, he can do so, but pay it with interest @ 12% from today. The employer shall pay the sum of Rs.30 lakhs within a period of four months from the date of receipt of a copy of this order. In case, the amount is not paid within the time as stipulated supra, then the amount will have to be paid with interest @ 12% per annum.



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nv

8. The writ appeals are disposed of accordingly. No costs.
Connected miscellaneous petitions are closed.

(S.V.N.J.) (K.R.S.J.)

nv

07.08.2023

To

1. The Presiding Officer,
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Chennai.
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