



Writ Appeal No.2620 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Writ Appeal No.2620 of 2023
and CMP.No.22088 of 2023

The Management,
Tamil Nadu State Transport Corporation,
(VPM) Ltd., Vellore Region, Rangapuram,
Vellore 632 009.
Rep. by its General Manager.

.. Appellant

Vs.

1. The Presiding Officer,
Principal Labour Court,
Vellore District, Vellore.
2. Indira
3. Sathish
4. Suresh
5. Suganya

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 23.03.2022 in WP.No.16403 of 2011 passed by the Single Judge of this Court.



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For Appellant : Mr.M.Aswin
For Respondents
for R1 : No Appearance
for RR2 to 5 : Mr.S.T.Varadarajulu

JUDGMENT

(The Judgment of the Court was delivered by S.VAIDYANATHAN, J)

Aggrieved by the order passed in the Writ Petition in WP.No.16403 of 2011 dated 23.03.2022, the present appeal has been filed by the Transport Corporation.

2. The present appeal has been filed by the Transport Corporation only on the ground that under the caption "for being mentioned", the order in the Writ Petition cannot be modified, which amounts to reviewing of the orders of the Court. In support of his contention, he relied upon the order of the Apex Court in ***Supertech Limited vs. Emerald Court Owner Resident Welfare Association and other reported*** in 2021 SCC OnLine Sc 3422.

3.The operative portion of the original order in WP.No.16403 of 2011 dated 23.03.2022, reads as follows:

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"6. Accordingly, there shall be a direction to the petitioner herein to pass appropriate orders, releasing the death-cum-retirement benefits to the legal heirs of late V.Kanthan, in accordance with the Award passed by the Principal Labour Court, Vellore in I.D.No.150 of 2006, dated 04.10.2020, within a period of four (4) weeks from the date of receipt of a copy of this order. The petitioner-Corporation will be entitled to deduct the last drawn wages paid under Section 17B of the Industrial Disputes Act, from the death-cum-retirement benefits."

4. Subsequently, the matter was listed under the caption "for being spoken to" and a clarification order was passed on 24.02.2023, deleting a portion of the direction to the effect that the petitioner-Corporation will be entitled to deduct the last drawn wages paid under Section 17B of the Industrial Disputes Act, from the death-cum-retirement benefits.

5. By means of the said clarification, the original order has been modified removing the specific direction that the 17B wages shall be



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deducted from the death-cum-retirement benefits. Though it may be correct that the wages under Section 17B cannot be deducted, as there is a specific order for deducting the amount, the employee should have preferred an appeal against that portion of the order permitting the Transport Corporation to deduct the wages or he should have sought for review of the order dated 23.03.2022, more so, in the light of the order of the Apex Court in the case of **Supertech Limited case** (referred to supra). The relevant paragraphs of the said order reads as follows:

"11. The attempt in the present miscellaneous application is clearly to seek a substantive modification of the judgment of this Court. Such an attempt is not permissible in a miscellaneous application. While Mr Mukul Rohatgi, learned senior counsel has relied upon the provisions of Order LV Rule 6 of the Supreme Court Rules 2013, what is contemplated therein is a saving of the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of the Court. Order LV Rule 6 cannot be inverted to bypass the provisions for review in Order XLVII in the Supreme Court Rules 2013. The Miscellaneous application is an abuse of the process.



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12. The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which are subject to the vagaries of wind and weather. A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification/clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly [“Quando aliquid prohibetur ex directo, prohibetur et per obliquum”].

13. Further, there is another legal principle which is applicable in the present case. It is that where a power is



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given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. Hence, when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and other methods of performance are necessarily forbidden. This Court too, has adopted this maxim. This rule provides that an expressly laid down mode of doing something necessarily implies a prohibition on doing it in any other way."

6. In view of the above, we are of the view that the plea taken by the Transport Corporation is perfectly in order and the order of the learned Single Judge is liable to be set aside. Accordingly, the same is set aside. It is open to the employee either to prefer a review of the original order in the Writ Petition or prefer a Writ Appeal against the said order in permitting the Transport Corporation to deduct wages under Section 17B of the Act.

7. After pronouncement of the order, Mr.M.Aswin, learned counsel appearing for the appellant/Transport Corporation would submit that the Transport Corporation will extend the benefit of the wages under Section 17-



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B if any deducted from the employee, within a period of four weeks. The said statement is recorded.

8. With the above observations, this Writ Appeal is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

(S.V.N.J.) (K.R.S.J.)
22.09.2023

Speaking Order: Yes / No
pvs

To
The Presiding Officer,
Principal Labour Court,
Vellore District, Vellore.



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