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W.A.No.2757 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2023

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.2757 of 2022 and
C.M.P.No.22369 of 2022

The Management,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Salai, Anna Salai,
Chennai- 600 0023.

...

Appellant

..Vs...

P.Nagarajan

...

Respondent

Prayer:Writ Appeal is filed under clause 15 of the Letter Patent against the final order dated 02.11.2021 passed by the learned Single Judge in W.M.P.No.22066 of 2021 in W.P.No.31892 of 2019.

For Appellant : Mr.Ramanlal
Additional Advocate General
For Respondent : Mr.V.Ajay Khose



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J U D G M E N T

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

The present Appeal has been preferred by the Appellant/Management challenging the order of the learned Single Judge in W.M.P.No.22066 of 2021 in W.P.No.31892 of 2019 dated 02.11.2021, in directing the Appellant to pay the Respondent/Workman the last drawn wages as provided under Section 17-B of the Industrial Disputes Act, 1947 (in short 'the I.D.Act, 1947') from the date of the Award and further directed the Management to disburse the arrears of such wages, atleast within a period of four weeks from the date of receipt of a copy of the order.

2. The Appellant has filed the Writ Petition in W.P.No.31892 of 2019 challenging the Award passed in I.D.No.157 of 2011 dated 05.10.2018. Pending disposal of the same, the Respondent/Workman filed a petition in W.M.P.No.22066 of 2021 seeking for a direction to the Management either to reinstate the workman or to pay last drawn wages to him as per Section 17-B every month from the date of filing of the Writ Petition till the disposal of the Writ Petition. The learned Single Judge, vide



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order dated 02.11.2021 directed the Appellant to pay the Workman the last drawn wages as provided under Section 17-B of the I.D. Act, 1947 from the date of the Award and further directed the Management to disburse the arrears of such wages, within a period of four weeks from the date of receipt of a copy of the interim order, challenging which, the present Appeal has been filed.

3. It is contended by the Additional Advocate General appearing for the Management that though the Workman filed an affidavit before the learned Single Judge stating that he was not gainfully employed during the relevant period, but, however the vigilance report dated 05.01.2022 was otherwise to the effect that he was gainfully employed. The Translated portion of the vigilance report is extracted below:

" That through the above Vigilance Department there was direct enquiries have been made thereof; That in the above enquiries, when his residence address was subjected to inquiries, it has been found that the above said Mr.P.Nagarajan has not been residing therein and however, he is at present residing at 1/6, Krishna Nagar, Tiruvekkadu, Chennai 600 077, which is his own house and that by letting out his above house portion on monthly rents, he has been deriving income thereof, and that the above said



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Th.P.Nagarajan has been working as a Loadman at M/s. Sanjana Traders at Maduravedu, Tiruverkkade and thereby drawing his monthly wages at Rs.10,000/- p.m. which details were furnished by the neighbouring residences of him and accordingly the above said facts are kept informed to the Sr.Deputy Manager (Human Resources Dept) herewith;"

3. For the sake of convenience, Section 17-B of the I.D.Act, 1947 is extracted below:

"17B.Payment of full wages to workman pending proceedings in higher courts.--- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages, shall be payable under this section for such period or part, as the case may be."



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4. It is contended by the learned counsel appearing for the Workman that the Management has not filed an Approval Petition and he has not been reinstated as per the order dated 05.10.2018 made in I.D.No.157 of 2011, which is against the decision of Constitution Bench of the Hon'ble Supreme Court in the case of ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd Vs. Ram Gopal Sharma and Ors.*** reported in ***(2002) 2 SCC 244***. In the light of the said Judgment, the workman is deemed to be in service, as the Writ Petition filed by the Management against the Award of Labour Court is still pending without any stay and the award passed is in force as on date. Hence, the workman filed a Miscellaneous Petition in W.M.P.No.22066 of 2021 under Section 17-B of the I.D.Act, 1947, for the payment of last drawn wages, wherein the learned Single Judge has granted the relief stated supra. The learned Single Judge in the order dated 02.11.2021, referred to an identical order passed in W.M.P.No.21520 of 2021 in W.P.No.1580 of 2021 dated 01.11.2021 and observed as follows:

“2. In the recent order passed in W.M.P.No.21520 of 2021 in W.P.No.1580 of 2021 dated 01.11.2021, this Court has held that such payment of last drawn wages under Section 17-B, would normally commence from the date of filing of the



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writ petition and whenever there is an inordinate and unexplained delay on the part of the Management in not challenging the award/rejection of the Approval petition, such payment would commence from the date of the award/rejection order.

3.In the instant case, the impugned Award in I.D.No.157 of 2011 was passed on 05.10.2018 and the Management has challenged the same in this Writ petition on 11.11.2019. Since the delay in filing the writ petition is more than one year and the reason assigned for such delay is unacceptable, the delay itself can be termed to be inordinate in nature and consequently the workman would be entitled for payment of the last drawn wages from the date of the rejection order. The workman herein also filed an affidavit before this Court wherein he has stated that he was not gainfully employed during the relevant period.

4. As such, there shall be a direction to the petitioner/Management to pay the workman the last drawn wages as provided under Section 17-B of the Industrial Disputes Act from the date of the Award. The Management shall endeavour to disburse the arrears of such wages, atleast within a period of four weeks from the date of receipt of a copy of this order.

5. It is to be mentioned that the evidence collected by the Management with regard to the gainful employment of the workman as stated in the Vigilance report, which is extracted supra, cannot be accepted, for the reason that though the employee is stated to be working as a Load-man at M/s.Sanjana Traders at Maduravedu, Tiruverkkadu and drawing a



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sum of Rs.10,000/- per month, no evidence has been produced by the Management to that effect.

6. At this juncture, it is represented by the learned counsel for the Workman that the workman is ready to join the work forthwith, preferably with effect from 01.02.2023.

7. First of all, there was no approval obtained from the competent authority in respect of dismissal of the Workman. Secondly there was no evidence adduced regarding gainful employment of the Workman except the vigilance Report dated 05.01.2022. In our considered opinion, the Management, instead of paying wages by keeping him idle, can utilize his services. However, this Court do not want to express any opinion in that, as it is for the Management to decide with regard to availing of his services. It is made clear that in case the Management is not inclined to take him back to work, he shall be paid wages under Section 17-B of the Act till the date of his Superannuation. It is further made clear that if the Workman is reinstated in service and paid the current wages on par with his counter



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parts. The arrears of wages payable shall be paid within a period of three months from the date of receipt of a copy of this Judgment and the wages under Section 17 B of the I.D.Act payable for every month shall be paid on or before 10th day of succeeding month in case the employee is not reinstated.

8. With the above directions, this Writ Appeal stands disposed of.
No costs. Consequently, connected Miscellaneous Petition is closed.

(S.V.N.J.) (M.S.Q.J.)
09.01.2023

arr
Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No

Note: Issue order copy on 02.02.2023



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