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W.A.No.156/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 24-01-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A.No.156 of 2023

The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Vellore Region,
Vellore – 632 009.

...

Appellant

-VS-

1.Special Deputy Commissioner of Labour, Chennai,
D.M.S.Compound,
Chennai-06.

2.K.Deenadayalan

...

Respondents

Appeal is filed under under Clause 15 of the Letters Patent against the order, dated 05.04.2022, passed in W.P.No.28178 of 2013, on the file of this Court.

For Appellant : Mr.M.Aswin

For Respondent 2 : No appearance



JUDGMENT

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This appeal has been preferred against the order of the learned single Judge, dated 05.04.2022, passed in W.P.No.28178 of 2013.

2. The second respondent employee was dismissed from service on 15.06.2011 for causing an accident. As the industrial dispute was pending between the management and the union, the appellant employer filed an application before the authority concerned under Section 33 (2) (b) of the Industrial Disputes Act, 1947, seeking approval of their action in dismissing the second respondent employee.

3. The main contention of the appellant was that when the second respondent employee had committed a serious misconduct and his past record was very bad, the question of his reinstatement would not arise. However, they would submit that there was a shortfall in payment of certain allowances and that would not entitle him to get the same, as he was not in service.

4. When the order of dismissal was passed on 15.06.2011, one month's salary payable on 15.06.2011 was to be paid and the appellant employer paid the salary of the second respondent employee for the month of March in the month of June and, therefore, there was a shortfall. For the sake of convenience, the salary drawn by the second respondent employee for the month of March, 2011, and payable in the month of April, 2011, is extracted below :



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Basic Pay	-	Rs.8560/-
Grade Pay	-	Rs.1900/-
Dearness Allowance	-	Rs.4707/-
House Rent Allowance	-	Rs.540/-
Medical Allowance	-	Rs,100/-
Attendance Allowance	-	Rs.50/-
Laundry Allowance	-	Rs.80/-

Total	-	Rs.15937/-

5. In the order, the authority has, apart from extracting the wages payable to the second respondent employee, categorically observed as follows :

16. தொழிற் துவா சட்டம் 1947, பிரிவு 33 (2) (b) ன் படி பணிநீக்கம் செய்யப்பட்ட தொழிலாளிக்கு முழுச் சம்பளம் வழங்கப்பட வேண்டும் என்பதை நிர்வாகம் கடைபிடிக்காமல் விதிபிறைவு செய்துள்ளது என்பதை எதிர்மனுதாரர் தெரிவித்துக் கொள்கிறார்.

எதிர் மனுதாரருக்கு நிர்வாகம் 23.3.2011 தேதியில் சம்பளம் கணக்கிட்டு ஆதர்படி அதாவது 2011 மார்ச் மாத சம்பளத்தை வழங்கியுள்ளது. ஆனால் நிர்வாகம் எதிர் மனுதாரரை 15.6.2011 ல் பணிநீக்கம் செய்துள்ளது. சட்டப்படி நிர்வாகம் ஜூன் 2011 க்கான ஒரு மாத சம்பளத்தை நிர்வாகம் வழங்கியிருக்க வேண்டும். ஜூன் 2011 மாத சம்பள தொகையை தராமல் மார்ச் 2011 க்கான சம்பளத்தை குறைவாக வழங்கியுள்ளது. அதற்கான கணக்கீட்டை எதிர்மனுதாரர் கீழே பணிபுள்ள அளிப்பித்துள்ளார்.

	மார்ச் 2011 க்கான சம்பளம்	ஜூன் 2011 க்கான சம்பளம்
அடிப்படை சம்பளம்	8560.00	8560.00 ✓
கிளேடு சம்பளம்	1900.00	1900.00 ✓
அகலிவைப்பு	4707.00	5334.60 ✓
வீட்டு வாடகைப்பு	540.00	540.00 ✓
மருத்துவப்பு	100.00	100.00 ✓
வருகைப்பு	50.00	50.00 ✓
சலவைப்பு	80.00	80.00 ✓
மொத்தம்	15937.00	16546.60

எதிர் மனுதாரருக்கு நிர்வாகம் வழங்கியிருக்க வேண்டிய தொகை ரூ.16,546.60 ஆகும். ஆனால் நிர்வாகம் வழங்கிய தொகை ரூ. 15,037.00 தான். நிர்வாகம் எதிர் மனுதாரருக்கு அவர் ரூ. 826.80 குறைவாக வழங்கி விதிபிறைவு செய்துள்ளது. வழங்க வேண்டிய அகலிவைப்புப்பான ரூ. 5334.60 ஐ குறைத்து ரூ. 4707.00 ஆக வழங்கி 33 (2) (b) பி பிரிவின்படி சட்ட மீறலை நிர்வாகம் செய்துள்ளது.



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6. The authority has considered the question of shortfall of payment by framing a question and held that there was a shortfall of Rs.608.80. The contention of the appellant that certain allowances like Laundry are not included for the purpose of computing one month's salary cannot be accepted.

7. For the sake of reference, Section 2 (rr) of the Industrial Disputes Act, 1947, which defines the term "wages", is extracted below :

"2[(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes-

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any commission payable on the promotion of sales or business or both; but does not include- (a) any bonus; (b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force; (c) any gratuity payable on the termination of his service."



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8. The definition includes all allowances that are payable to the employee and they are no exception. Since allowances payable to the employee fall within the inclusive definition, we are of the view that there is a shortfall in one month's payment of salary. The authority has rendered a finding of fact, which has been rightly upheld by the learned single Judge.

9. We do not find any merit in this appeal and it is, accordingly, dismissed. The amount payable to the second respondent employee along with all other benefits shall be paid by the appellant management within a period of four months from the date of receipt of a copy of this order, if not already paid. No costs. Consequently, the connected C.M.P.No.1481 of 2023 also stands dismissed.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
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(S.V.N.,J.) (J.S.N.P.,J.)
24-01-2023

To

Special Deputy Commissioner of Labour, Chennai,
D.M.S.Compound,
Chennai-06.



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6/6



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