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W.A.No.1187 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.06.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1187 of 2023
and C.M.P.No.12120 of 2023

The Management
Tamil Nadu State Transport Corporation
(Coimbatore Division – II) Limited
Chennimalai Road,
Erode

.. Appellant

Vs.

P.Murugesan (Deceased)

1.The Presiding Officer
Joint Commissioner of Labour
(Conciliation), Chennai

2.Annakkodi

3.Vinoth Kanna

4.Dhineshkumar

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 29.07.2021 passed by the learned Judge in W.P.No.12792 of 2006.

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For Appellant : Mr.T.Chandrasekaran

For Respondents : Mr.V.Ajay Khose
for Mr.N.Senthil Kumar

JUDGMENT

[Judgment of the court was delivered by R.MAHADEVAN, J.]

Challenging the order dated 29.07.2021 passed by the learned Judge in W.P.No.12792 of 2006, the appellant Transport Corporation has preferred the present appeal.

2. The brief facts of the case, which are necessary for disposal of this appeal, would run thus:

2.1. One P.Murugesan (deceased) joined as Driver in the appellant Transport Corporation on 03.06.1987. On verification, it was found that the certificate of educational qualification submitted by him was fabricated document and hence, charges were framed and domestic enquiry was conducted. Based on the enquiry report, the employee was dismissed from service.



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2.2. Thereafter, the appellant Transport Corporation filed Approval Petition No.80 of 2004 under Section 33(2)(b) of the Industrial Disputes Act, 1947, before the Joint Commissioner of Labour, Chennai, seeking approval for dismissing the aforesaid employee from service. However, by order dated 12.02.2005, the Labour Court refused to accord approval on the ground that the domestic enquiry was not done in accordance with the principles of natural justice and hence, the findings of the enquiry officer are perverse.

2.3. Challenging the aforesaid order dated 12.02.2005, the appellant Transport Corporation filed a writ petition in W.P.No.12792 of 2006. Pending the same, the employee / first respondent in the writ petition, died and his legal heirs were impleaded as party respondents. At the time of hearing, the legal heirs of the deceased employee submitted that they were willing to give up 50% of backwages, so as to get family pension. Considering all the facts, the learned Judge disposed of the writ petition, with the following directions and observations:

“5. Taking note of the submissions of the learned counsel appearing for Respondents 3 to 5/legal heirs of the deceased employee, backwages to an extent of 50% is deprived and in view of the same, the legal heirs/dependents of the deceased employee are eligible to get



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family pension from the date of demise of the employee. Provident Fund and Gratuity due to the deceased employee shall be paid to his legal heirs within a period of four months from the date of receipt of a copy of this order.

6. *It is made clear that, in order to get better family pension, since 50% of the backwages of the deceased employee have been given up, the Provident Fund Contribution by the employer shall be paid from and out of the remaining terminal benefits that are going to be extended to the family members of the deceased employee. Remaining amount, if any, lying in deposit shall be withdrawn by the employer. It is further made clear that, the Provident Fund contribution shall be deposited to the Provident Fund Trust, without interest."*

2.4. Aggrieved by the aforesaid order, the appellant Transport Corporation preferred the present appeal before this court.

3. Mr.T.Chandrasekaran, learned counsel for the appellant submitted that the order of the learned Judge is illegal and contrary to law. Adding further, the learned counsel submitted that the deceased employee was dismissed from service for having submitted bogus certificate for his educational qualification. However, without providing any valid reason, the Labour Court refused to grant approval for the said dismissal order passed by the appellant Transport Corporation. It is also submitted that the learned Judge merely based on the undertaking given by the legal heirs of the deceased employee to forego 50% backwages, erred in holding that the legal



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heirs of the deceased employee are eligible to get family pension; and that, the finding of the learned Judge that deduction of share of the employee towards provident fund from and out of the employer's contribution is not sustainable and the same is contrary to the Rules. Stating so, the learned counsel sought to allow this appeal by setting aside the order of the learned Judge.

4. Per contra, the learned counsel for the respondents submitted that after analysing all the factors, the learned Judge has rightly passed the order impugned herein, which does not require any interference at the hands of this court.

5. Heard both sides and perused the materials available on record.

6. The fact remains undisputed is that the deceased employee was working in the appellant Transport corporation and he was subjected to enquiry for the alleged production of bogus certificate for his educational qualification, which resulted in dismissal of him from service. However, the



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said order was not approved by the Labour Court on the ground of violation of the principles of natural justice. Therefore, the appellant Transport Corporation approached the writ court. During the pendency of the writ petition, the employee died and his legal heirs, who were brought on record, gave an undertaking not to claim 50% of backwages payable by the appellant, for the purpose of getting family pension. Taking note of all these aspects, the learned Judge, after having held that the legal heirs of the deceased employee are entitled for family pension from the date of demise of the employee, directed the appellant Transport Corporation to pay provident fund and gratuity to the legal heirs, within a period of four months from the date of receipt of the copy of that order.

7. Though the aforesaid order of the learned Judge has been challenged by the appellant Transport Corporation in this writ appeal, we find no reason to interfere with the same. Concededly, the order of dismissal passed against the deceased employee was not approved by the Labour Court; and the employee died during the pendency of the writ petition. As such, neither the order of dismissal passed by the appellant authority nor the



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order passed by the Labour Court refusing to accord approval for such dismissal, can be tested by any court of law, as it is settled principle that holding any enquiry and imposition of punishment contemplate a pre-requisite condition that the employee concerned, who is to be proceeded against and is to be punished, is continuing an employee, meaning thereby is alive. Accordingly, the learned Judge observed that the matter cannot be sent back to establish the charges by the appellant, as the employee is no more and hence, the employee had the benefit of the order passed by the Labour Court in the approval petition. Therefore, we are of the view that the employee was deemed to be in service and on his demise, his legal heirs are entitled to get all the benefits payable to the deceased employee, such as, provident fund, DCRG, family pension, etc.

8. It is seen from the records that the writ court by order dated 16.12.2008, directed the appellant Transport Corporation to pay 50% of the backwages to the employee and deposit the balance 50% in any nationalised bank; and the said direction has also been complied with. During the course of hearing, the legal heirs of the deceased employee had given up the



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remaining 50% of the backwages and they required only family pension.

Having regard to the same, the learned Judge directed the appellant Transport Corporation to pay the provident fund contribution to the legal heirs of the deceased employee from and out of the deposit representing 50% of the remaining backwages and to deposit the balance amount to the Provident Fund Trust. We do not find any infirmity or illegality in the direction so issued by the learned Judge, warranting interference.

9. In fine, this writ appeal *sans* merit and is accordingly, dismissed. The appellant Transport Corporation is directed to comply with the order of the learned Judge, within the time frame stipulated thereunder. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
15.06.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd



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To

The Presiding Officer
Joint Commissioner of Labour
(Conciliation), Chennai



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R.MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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