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W.P.No.19922 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19922 of 2017

And

W.M.P.No.21493 of 2017

The Management
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
Kumbakonam Region,
27, Railway Station New Road,
Kumbakonam.

... Petitioner

Vs.

1.C.Rajendran (Died)

2.The Special Deputy Commissioner of Labour,
D.M.S. Compound,
Chennai.

3.R.Ragini

4.R.Keerthana

5.R.Pradeepa

6.R.Surya

7.R.Rajesh

(R3 to R7 substituted as LR of deceased
first respondent vide order dated
14.09.2023 made in WMP.26131/2023
in WP.19922/2017 by MDIJ)

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to



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issue a Writ of Certiorari to call for the records of the second respondent made in A.P.No.429 of 2012 dated 19.12.2016 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.C.Senapathi

For Respondents : R1 – Died
steps taken vide WMP.26131/2023
Mr.M.S.Prem Kumar for R2
Government Advocate

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records of the second respondent made in A.P.No.429 of 2012 dated 19.12.2016 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

2.The case of the petitioner is that when the first respondent was working as Driver in Pattukottai Depot, a basic report was received from Branch Manager that the first respondent was unauthorizedly absent from September, 2009 and hence the petitioner issued charge memo dated 09.02.2010 to the first respondent. Since the first respondent did not give any reply, the



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petitioner appointed enquiry officer to conduct enquiry and the enquiry officer conducted enquiry. Thereafter, the enquiry officer submitted his report and the enquiry report was furnished to the first respondent on 17.02.2011 and since he did not submit any reply, second show cause notice dated 27.06.2011 was issued to the first respondent and since the first respondent did not reply for the show cause notice, order of dismissal dated 05.06.2012 was passed against the first respondent and approval petition was filed before the second respondent, however, the second respondent rejected the approval petition. Challenging the same, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner submitted that the second respondent rejected the approval petition submitted by the petitioner on the ground that the petitioner did not give one month salary to the first respondent along with the dismissal order. The learned counsel further submitted that if there is any calculation mistake or any other error, it would not vitiate the termination when the employer makes good the deficit payable. It would follow as a corollary that if there is any difference in wages remaining to be paid, it is incumbent upon the second respondent to call upon the



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petitioner to pay the same to the first respondent under written acknowledgment before refusing the approval petition. However, in the present case, the second respondent without providing any opportunity to the petitioner Corporation to pay the differential amount, rejected the approval petition, which is not sustainable one. In support of his contentions, the learned counsel relied upon the decision of this Court reported in MANU/TN/7271/2020 [Management, Tamil Nadu State Transport Corporation (Villupuram) Limited Vs. M.Chitti Babu and others].

4.The learned counsel appearing for the petitioner further submitted that during the pendency of the writ petition, the first respondent/ workmen passed away and further submitted that the respondents 3 to 7 are the legal heirs of the deceased first respondent.

5.Though the writ petition has been filed during the year 2017, the petitioner has not taken any steps to serve notice on the first respondent and the first respondent has also passed away. Considering the pendency of the writ petition, this Court is inclined to proceed with the case and decide the same based on the materials



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available on record.

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6. Admittedly, the first respondent was unauthorizedly absent from September, 2009, for which, the petitioner issued charge memo dated 09.02.2010 to the first respondent. Thereafter domestic enquiry was conducted and order of dismissal was passed against the first respondent and approval petition was filed seeking approval of the order of dismissal and the said approval petition was rejected by the second respondent.

7. Perusal of the impugned order reveal that the first respondent is entitled for 65% dearness allowance as per G.O.No.116, dated 01.04.2012 marked as Ex.R3 by the first respondent, however, first respondent was given only 58% dearness allowance and was paid only a sum of Rs.16,388/- vide cheque no.531359 dated 05.06.2012 as one month salary. It is the duty cast upon the petitioner to pay the differential amount before rejection of the approval petition. Hence, this Court is not inclined to interfere with the impugned order.

8. Since the first respondent has passed away during the pendency of this writ petition, the petitioner Corporation is directed



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to settle the entire terminal benefits due to the first respondent in favour of his legal heirs, within a period of four weeks from the date of receipt of a copy of this order.

M.DHANDAPANI,J.

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9.The writ petition dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

14.09.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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