



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.14624 of 2020

and

W.M.P. (MD) No.12278 of 2020

1.The Managing Director,
Thiruvalluvar Transport Corporation,
Now State Express Transport Corporation,
Tamil Nadu,
Pallavan Salai,
Chennai.

2.The Branch Manager,
Thiruvalluvar Transport Corporation,
Now State Express Transport Corporation,
Avaishanmugam Salai,
Nagercoil,
Kanniyakumari District.

... Petitioners

Vs.

P.Chidambaram

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the Labour Court, Tirunelveli in C.P.No.2 of 2017, dated 17.12.2019 and to set aside the same.

For Petitioners : Mr.S.C.Herold Singh

For Respondent : Mr.M.R.Sreenivasan

ORDER

Heard the learned counsel on either side.

2. Thiru.P.Chidambaram was employed as driver in SETC. He joined in the year 1978. In the year 1992, he met with an accident and suffered fracture in the leg. He became medically unfit to discharge the duty of the driver. He was given alternative duty of computer operator. However, four years later, in December 1996, he was forced to drive the bus. Since the petitioner expressed his misgivings and went on leave, the Management issued show cause notice. The petitioner offered his



explanation. Not satisfied with the same, on 17.07.19 the workman was dismissed from service. Challenging the same, Chidambaram raised an industrial dispute in I.D.No.49 of 1999 on the file of the Labour Court, Tirunelveli. I.D was allowed on 23.06.2004. The Management filed W.P.No.1138 of 2007 challenging the award. The writ petition was dismissed on 12.02.2013. Thus, the award passed by the Labour Court became final. The workman filed C.P.No.2 of 2017 on the file of the Labour Court, Tirunelveli. The Labour Court vide order dated 17.12.2019 directed the management to pay a sum of Rs.3,93,587/-. Challenging the same, the management filed this writ petition.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. On the other hand, the learned counsel appearing for the workman submitted that the impugned order does not warrant interference.

4. I carefully considered the rival contentions and went through the materials on record. The amount awarded by the Labour Court falls under the following heads namely back wages, leave surrender salary, earned leave, commutation and interest of provident fund. As regards the back wages, it does not warrant any interference. Though the learned counsel appearing for the management would strongly contend that the petitioner is not entitled to leave surrender salary or earned leave, I have to necessarily hold that an employee who has been ordered to be reinstated with all consequential benefits will be entitled to leave encashment also. The learned counsel appearing for the petitioner draws my attention to the decision reported in **2016 SCC Online Kar 8948 (H.C.Jayaprakash Vs. General Manager)**. It is very much in favour of the workman. I therefore sustain the order passed by the Labour Court under these two heads. As regards the payment of interest, the Labour Court is awarded 8% interest per annum. In my view, this can be reduced to 6% per annum. The question of awarding commutation may not really arise. This is because the workman reached the age of superannuation in the year 2004 itself. He has been receiving his pension ever since. Normally, commutation is given at the time of retirement and corresponding reduction is made from the pension. Since the workman is now aged about 70 years, if the management is made to pay the commutation amount at this point of time, it may be difficult for them to recover it later in the event of there being any unfortunate occurrence. Therefore, the award amount under the commutation head alone is set aside. Interest of provident fund is reduced from 8% to 6%. In all other respects, the impugned order is affirmed.



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5. The writ petition is partly allowed. No
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar()

// True Copy //

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Sub Assistant Registrar(CS)

Rmi

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-26721[F] dated
07/06/2023)

+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-26990[F] dated
08/06/2023)

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