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W.P.No.11320 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.10.2023

Pronounced on : 09.02.2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

W.P.No.11320 of 2008

1. R. Balusamy (died)

2. B. Kirubakaran

3. B. Ranganathan

4. B. Vijayalakshmi

5. S.B.Maragadeeswari

...Petitioners

Vs

1. The Presiding Officer
Labour Court
Salem.

2. The Tamil Nadu State Transport
Corporation (Salem) Ltd
rep. By its Managing Director
Salem.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records pertaining to I.D.No.112 of 2001 dated 16/11/2004 on the file of the first respondent and quash the portion of the Award by which the first respondent has denied entire



W.P.No.11320 of 2008

backwages and other attendant benefits to the petitioner and further direct the second respondent to pay entire backwages and other attendant benefits till the date of his superannuation.

For petitioner : Mr.K.V.Shanmuganathan
For respondents : R.1 - Court
Mr.Ilamvazhudhi
for Mr.R.Balu
for R.2.

ORDER

This writ petition is been filed to quash the Award dated 16/11/2004 passed in I.D.No.112 of 2001 by the first respondent and consequently, direct the second respondent to pay entire backwages and other attendant benefits till the date of his superannuation.

2. Facts which are necessary for the disposal of this writ petition are as follows:-

2.1. The first petitioner late Balusamy, has joined the services of the second respondent Corporation, on 01.7.1980 as Driver. On 23.8.1999, while he was proceeding from Salem to Vanavasi, a minor girl crossed the road from right to left, due to which accident had occurred. A charge memo



W.P.No.11320 of 2008

was issued by the second respondent. After enquiry and based on the enquiry report of the second respondent, the petitioner was terminated from service.

2.2. Challenging the termination order, the petitioner has raised an Industrial Dispute before the Labour Officer, Salem but the same ended in failure. Hence, the first petitioner has filed I.D.No.112 of 2001 before the first respondent. It was disposed of with a direction to the second respondent to reinstate the first petitioner and to pay backwages. The Labour Court in its award has come to the conclusion that though the accident had occurred as the minor girl had suddenly crossed the road, it is observed that the petitioner was also partly responsible for the accident.

2.3. Even though, this Court has directed the second respondent to pay last drawn wages under Section 17 B of the I.D.Act, 1947 from the date of filing of W.P.No.34153 of 2005, the second respondent Corporation has not paid the arrears of last drawn wages, till date.

3. Heard Mr.V.Shanmuganathan, learned counsel for the petitioner and Mr.Ilamvazhudhi, learned counsel for the second respondent.



W.P.No.11320 of 2008

4. The learned counsel appearing for the petitioner submitted that a sum of Rs.1,23,130/- is due to the petitioner towards gratuity for 25 years from 01.7.1980 to 30.06.2005 ($25 \times 8537/26 \times 15$). It is also submitted that the second respondent Corporation has to pay interest @ 10% from the date of due i.e., 30.06.2005 to till the date of payment, for delayed payment of gratuity.

5. The learned counsel appearing for the second respondent Corporation would submit that since the workman caused fatal accident, as per Rule 6 (5) (b) (i) of Anna Transport Corporation Limited, the petitioner is not eligible for gratuity.

6. The petitioner who was working as a Driver has caused fatal accident thereby, he was removed from service by the respondent Corporation, after an enquiry. The petitioner has raised I.D.No.112 of 2001 which was allowed with a direction to re-instate the petitioner with backwages and attendant benefits. The said directions have not been complied with. The last drawn wages as directed by this under Section 17 B of the Industrial Dispute Act, 1947, were also not paid.

7. The petitioner is no more and his legal representatives



W.P.No.11320 of 2008

were brought on record. Since the petitioner is no more, the directions of the Labour Court insofar as re-instatement of the petitioner is concerned becomes infructuous.

8. The learned counsel for the petitioner fairly concedes that the petitioners are not intending for payment of back wages and prepared to forgo the backwages. Once the petitioner is no more and back wages are not pressed, the other aspect is continuity of service with all benefits and payment of gratuity.

9. The learned counsel for the respondents has brought notice to this Court about the by laws of Anna Transport Corporation Ltd. The relevant portion of the same is read as under:-

"5. *Notwithstanding anything contained in sub-section*

(a) The Gratuity of an employee, whose services have been terminated for any act, willful omission or negligence of using any damage or loss to or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(b) The Gratuity payable to an employee shall be wholly forfeited:



WEB COPY



W.P.No.11320 of 2008

- (i) *If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or*
- (ii) *If the services of such employees have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."*

10. On going through the above rules, it is clear that if a Driver commits an accident or causes damages to the property, out of the gratuity amount the money spent for repairing the said damages can be deducted. In the on hand, there is no record as to how much damages have been caused to the vehicle at the time of the accident. Considering from any angle, basing on the rules referred above, it cannot be said that the first petitioner is not entitled for gratuity. The petitioner counsel has filed a memo giving the details of gratuity to be received by the first petitioner which comes to an amount of Rs.1,23,130/-.

11. In view of the above discussion, this writ petition is disposed of directing the second respondents to pay the gratuity to the tune of Rs.1,23,130/- to the first petitioner subject to its correctness with continuity of service from the date of dismissal of service until the date of his superannuation



W.P.No.11320 of 2008

or the death whichever is earlier, however, the petitioner is not entitled for back wages as the petitioners have relinquished their claims. No costs.

09.02.2024

vca

Internet : Yes/No
Index : Yes/No
Citation : Yes/No

To:

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Dr.D.NAGARJUN,J

mvs/vca



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Pre-delivery order made in
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