



W.P.No.12639 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 08.01.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.12693 of 2019
and
WMP.No. 12925 of 2019

The Management
Tamil Nadu State transport Corporation,
(Coimbatore) Ltd.,
Mettupalayam Road,
Coimbatore-641 043.

...Petitioner

Vs

P.Jayakumar

...Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records made in CP.No.106 of 2016 dated 02.01.2019 on the file of the Additional Labour Court, Coimbatore and quash the same.

For Petitioner : Mr. A.Sundaravadhanam
Standing Counsel

For Respondent : No appearance



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ORDER

Writ petition is filed challenging the order made in C.P.No. 106 of 2016 dated 02.01.2019 whereunder the claim petition of the respondent claiming monetary relief to the tune of Rs.76,587/- was directed to be paid along with 6% interest per annum from the date of the petition till realisation.

2. The petitioner will be referred to as the Corporation and the respondent as workman.

3. The workman joined the services of the Corporation as a driver on 18.06.2016. According to the workman as per the various settlements entered between the Trade Unions and the Corporation, the services of a workman who completed 240 days in a calendar year were to be regularised. As disciplinary proceedings were pending against the workman, his services were not regularised. Only after the completion of



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the proceedings, in which, he was found guilty and punishment of recovery of Rs.74/- from his salary was ordered on 14.10.2008, that the regularisation order was passed on 23.05.2009, regularising his services from 01.06.2007. As the salary was not paid to him as per the regularisation order dated 23.05.2009 for the period from 01.06.2007 to April 2009, he filed the claim petition for a total sum of Rs.91,774.78/- at 24% interest (Rs.76,586/- towards difference in wages and Rs.15,188/- towards earned leave).

4. The Corporation filed its counter to the claim petition stating that the respondent was regularised on 23.05.2009 and the regularisation was made effective from 01.07.2007. It was the Corporation's case that the regularisation order did not provide for arrears of wages. It was further stated that the workman received the regularisation order without any demur and once the consent was given, it could not be retracted. It was further stated that as the claim petition claiming differential wages was



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filed belatedly, (i.e) with a delay of 7 years the claim petition deserved to be dismissed on the ground of delay and laches. The Corporation questioned the maintainability of the petition under Section 33 C (2) of the I.D. Act as there was no prior adjudication of the amount claimed.

5. Though notice was served on the respondent, the respondent has not appeared either in person or through counsel.

6. The learned counsel for the petitioner submits that the Labour Court failed to note that the claim petition under Section 33-C(2) was not maintainable. According to the counsel, when the Corporation disputed the difference in wages claimed and also the right to retrospective payment of the same, the Labour Court ought to have rejected the claim petition. The learned counsel submits that the Labour Court failed to note that when factual disputes were raised on the entitlement, the claim petition could not be entertained as the sine qua non of Section 33(C)(2) petition is a valid



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adjudication of the right of the workman to the benefits claimed. The learned counsel relies on the Judgment of this Court in W.P.No.3996 of 2015 dated 10.09.2019 in support of his contentions.

7. The Labour Court on the submission of the Corporation that the claim petition was hit by delay and laches rejected the same by stating that the workman was still in service and therefore the claim petition filed on 14.11.2016 while in service could not be considered to be filed belatedly. On the question of earned leave, the Labour Court rejected the same for want of pleadings and evidence to show the surrender of earned leave by the workman during the disputed period. The Labour Court relying on the pay slips marked as Ex.W2 to Ex.W4 for the period from June 2007 to June 2009 held that the calculation of the workman was correct and proper and also that there was no serious dispute by the petitioner. The Labour Court therefore found that the respondent was entitled for the difference in wages and other benefits as claimed by him in the claim petition.



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Aggrieved by the Award of the Labour Court the Corporation has filed the above writ petition.

8. As already noted there is no representation for the respondent/workman.

9. I have considered the submission of the learned counsel for the petitioner. The Labour Court proceeded on the footing that in the regularisation order, Ex.W1 no condition was incorporated regarding arrears of wages. The Labour Court therefore held that when no condition was imposed the workman was entitled to difference in wages and other benefits. In my view, the Labour Court has miserably failed to appreciate the pleading and Ex.W1. The Corporation in para 10 of its counter stated as follows.

*“10. The respondent submits that the regularization order
issued to the petitioner vide ref*



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No.2183/E3C/71/PDI/TNSTC/CBE/09 dt.23.05.2009 in which it is clearly mentioned as "மேற்படி ஓட்டுநர்களுக்கு 01.06.2009 அன்று வழங்கப்படவுள்ள மே'2009 மாத ஊதியத்துடன் பணப்பலன் வழங்குமாறு கேட்டுக்கொள்ளப்படுகிறது". In that order the respondent has not ordered about the salary arrears for the period from effective date of regularization to order issued date. As per the above order the petitioner is eligible monetary benefits only from 01.06.2009 only."

10. From a reading of the above para it is seen that the wages on regularisation were payable only from 01.06.2009. Therefore the Labour Court has committed a factual error in thinking that there was no condition regarding payment. Once the salary arrears from effective date of regularisation to the date of issue of order and the basis for the amount claimed were disputed, the Labour Court ought to have rejected the claim petition.



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11. The learned counsel for the Corporation relied on the Judgment of this Court in W.P.No. 3996 of 2015, wherein under similar factual circumstances this Court held as follows:

"15. The Labour Court in proceedings under Section 33-C(2) of the Industrial Disputes Act, cannot adjudicate the issues on merits, so as to crystallize the rights of the workmen. Such an adjudication must be done in the manner prescribed under the Industrial Disputes Act and therefore, the contention of the learned counsel for the writ petitioner/Corporation that the Labour Court considered the documents as well as the merits and accordingly granted the relief by computing the arrears of salary cannot be accepted. If such an adjudication on merits under Section 33C(2) is permitted, then the very spirit and purpose of the adjudication process contemplated under the other provisions of the Industrial Disputes Act, are not only diluted but also defeated. Thus, every provisions of the Industrial Disputes Act has got its own spirit and sanctity."



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12. The Hon'ble Supreme Court in catena of Judgments namely *Municipal Corpn. of Delhi vs Ganesh Razack and Another* reported in 1995 (1) SCC 235, *M/s. Punjab Beverages Pvt. Ltd. vs. Suresh Chand and Another* reported in 1978 (2) SCC 144, *State of Uttar Pradesh and Another vs. Brijpal Singh* reported in 2005 (3) LLJ 1003 etc. has categorically held that the proceedings under Section 33(C)(2) of the I.D Act are in the nature of execution proceedings and only rights and entitlements which are crystallised by adjudicatory process could be entertained on this ground also the Award of the Labour Court deserves interference.

13. In the light of the fact that there is a serious dispute as to the entitlement of the workman to the claim amount, and the prevailing law on the subject, I am of the view that the Labour Court erred in entertaining the petition under Section 33 (C)(2) of the Act.



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14. One more aspect is the long delay of 7 years in filing the claim petition. The regularisation order was passed on 01.06.2009 and 7 years thereafter in 2015 the claim petition was filed. The contention of the petitioner's counsel that the very fact that the workman approached the Labour Court after an inordinate delay of 7 years proves that the regularisation order was only prospective and not retrospective cannot be ignored. In my view the unexplained and inordinate delay of 7 years is an added factor for dismissing the claim.

In view of the above discussion, the writ petition is allowed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

08.01.2024

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

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To

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(Coimbatore) Ltd.,
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N.MALA,J.

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