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W.P.No.17376 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30/1/2024
Delivered on	11/3/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.17376 of 2014

a n d

M.P.No.2 of 2014

The Management

Tamil Nadu State Transport Corporation Ltd

Rep. by its General Manager

Salamedu, Vazhuthareddy

Villupuram

Villupuram District.

...

Petitioner

Vs

1. K. Ramakrishnan

2. The Presiding Officer

Labour Court

Pondicherry.

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India
for the issuance of a writ of Writ of certiorari to call for the records of the



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the driver's right eye. Basing on the finding of the Medical Board that he is unfit to drive, he was removed from service.

3. The first respondent has filed I.D.No.13 of 2003, aggrieved by his dismissal from service. The said I.D was allowed on 24/2/2006, directing the petitioner Corporation to provide suitable employment, on account of his disableness. Accordingly, the first respondent was appointed as Helper. The first respondent, aggrieved by appointing him as Helper, approached this Court and filed W.P.No.5542 of 2007 and the same was allowed, directing the petitioner Corporation to pay the salary, which he was drawing earlier, as Driver, including the benefits, arrears, etc. The petitioner Corporation has preferred Writ Appeal No.1844 of 2010 but the same was dismissed on 15/3/2011.

4. In pursuance of the directions of this Court, the petitioner Corporation has in all paid the first respondent a sum of Rs.5,35,026, after deducting Income Tax, etc. The petitioner has filed Claim Petition No.6 of 2012 on the file of the Labour Court/second respondent, Pondicherry, claiming bonus of Rs.15,000 under Bonus Act, settlement protected Pay Allowance, Attendance allowance, stitching allowance,



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laundry allowance, earn leave, medical leave, cash leave, etc., and other benefits from 1/6/2002 to 30/6/2010. In respect of the said claim, labour Court after conducting an enquiry has ultimately allowed the Claim Petition directing the petitioner Corporation to pay the benefits as claimed by the first respondent. Aggrieved by the same, present writ petition is filed.

5. Heard Mr.A.Aswin, learned counsel for the petitioner and Mr.T.Saikrishnan learned counsel for the first respondent.

6. It is submitted by the learned counsel for the petitioner that the petitioner's medical allowance, stitching allowance, laundry allowance, medical leave, casual leave can only be paid to the employee, who are on the rolls of the establishment and working, thereby, petitioner is not entitled for payment of the benefits as sought for and whatever the first respondent is entitled to they were already given to him by way of cheque, thereby orders of the labour Court are erroneous.

7. The learned counsel for the first respondent on the other hand



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submitted that wages includes all emoluments, and termination of the petitioner is irregular, he shall be paid with all the other benefits.

8. The basis for the first respondent to claim the benefits is the directions of this Court in W.P.No.5542 of 2007 dated 22/3/2010. The relevant portion which is extracted hereunder:-

“....the second respondent is directed to fix the salary of the petitioner in appropriate time scale without reduction in emoluments he was drawing and pay the arrears with effect from 1/6/2002 to the petitioner and grant all other attendant benefits as per the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities and Protection of Rights and Full Participation) Act, 1995. It is made clear that the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.”



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9. The learned counsel appearing for the petitioner Corporation has submitted that the petitioner Corporation has implemented the directions of this Court making payment to the first respondent's salary, emoluments, and also paid the arrears with effect from 1/6/2002.

10. As rightly submitted by the learned counsel for the petitioner, this Court has directed in W.P.No.5542 of 2007 to fix the salary of the petitioner as per the time scale without reducing the emoluments with effect from 1/6/2002, this part of the orders have been implemented. If at all the intention of the Court is to order for payment of arrears of all attendant benefits, this Court should have specifically mentioned to pay the arrears of attendant benefits also with effect from 1/6/2002, however, in so far as attendant benefits are concerned, the order speaks "grant all other attendant benefits" as per the provisions of Section 47 of the said Act.

11. Therefore, this Court is in agreement with the interpretation of the petitioner counsel that this Court in W.P.No.5542 of 2007 has not directed the petitioner to pay arrears of the attendant benefits and that arrears were restricted only to pay and other emoluments. Since this



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Court in W.P.No.5542 of 2007 has mentioned that the attendant benefits are to be paid to the first respondent as per the provisions of Section 47 of the said Act, it is required to see whether Section 47 of the said Act speaks about the payment of arrears in respect of attendant benefits.

12. Section 47 of the Rights and Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 reads as under:-

“Non-discrimination in Government employment .-(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:Provided further that if it is not possible to adjust the employee against any post, he may be kept on a



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supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

13. On a careful perusal of the above provision, it is clear that no establishment shall reduce the rank or remove a person who acquires disability during the service. The provision of Section 47 speaks that if a person who acquires disability during the service is not suitable to the post which he is holding, he could be shifted to some other posts with



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the same pay scale and service benefits.

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14. As per provisio of Section 47 of the Act, the person who is provided with some other suitable post shall be paid same pay and service benefits. That means at the first place, a person who acquires disability during the service shall not be removed and in case if suitable post is not available, he should be shifted to some other post with same pay with service benefits. This Section 47 of the Act did not not speak that in case if a person is removed from service on account of disability and if he is reemployed, all the backwages be paid with all the attendant benefits.

15. This Court, in W.P.No.5542 of 2007 has directed for reinstatement of the first respondent with backwages. However, orders of this Court cannot be interpreted to say that the benefits which are being paid to a person who is physically working shall be paid even if he is not working.

16. There are certain allowances, which can be provided to the employees, only if they physically work. For example, the stitching



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allowance, laundry allowance, medical leave, casual leave, attendance allowance, etc., will normally be given in case if an employee is physically working in the Corporation. In case if an employee is not working he cannot be given laundry allowances, stitching allowances, casual leave etc. In view of the above, impugned orders passed by the labour Court in C.P.No.6 of 2012 suffers from mis-interpretation of order of this Court and Section 47 of the said Act.

17. In the result, this writ petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

11/3/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

1. The Presiding Officer



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Labour Court
Pondicherry.



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Dr.D.NAGARJUN,J

mvs.



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Pre-delivery order made in
W.P.No.17376 of 2014

11/3/2024