



WEB COPY



WA No.2929 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.2929 of 2024

The Management,
Metropolitan Transport Corporation Ltd.,
Pallavan House,
PallavanSalai, Chennai-2.

: Appellant

versus

1.The President Officer,
II Additional Labour Court,
Chennai.

2.Paravathy
3.Nithyakalyani
4.Ponnulaskshmi

: Respondents

PRAYER: Writ Appeal filed against the order of the learned Single Judge
in WP No.1046 of 2016 dated 07.07.2023.

For the Appellant : Mr.A.Vinothraj

For the Respondents : Mr.V.AjoyKhose



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JUDGMENT

(Made by *M.S.RAMESH. J.*)

This Writ Appeal is filed against the order of the learned Single Judge in WP No.1046 of 2016 dated 07.07.2023.

2. The respondents 2, 3 and 4 are the legal heirs of one Venugopal, who was the erstwhile driver of the Management. Originally, the late workman was removed from service on 27.02.1984 by the Management. Since an industrial dispute touching upon the conditions of service of the workman of the Management was pending at the relevant point of time, the Management had sought for approval of the action taken from the appropriate authorities under Section 33(2)(b) of the Industrial Disputes Act, 1947 (the 'Act'), which came to be rejected by the Tribunal. The resultant effect would be that the concerned workman, is deemed to have continued in service from 27.02.1984 onwards, with all attendant benefits. In this background, the Management had reinstated the late workman back into service on 16.05.1989. However, on 29.10.1994, he was once again



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removed from service. On this date, a dispute raised by the workman seeking for bonus was pending before the Labour Court in I.D.No.62 of 1982. However, the management had not filed any application under Section 33(2)(b) of the Act, seeking for approval of the action taken. Thus, when admittedly a dispute touching upon the claim for bonus was pending before the Labour Court, which may have a bearing on the conditions of service applicable to the concerned workman, the imposition of a punishment of removal from service, without seeking for removal of the action taken, as mandated under Section 33(2)(b) of the Act, would become *ab initio* void and the order of termination would be illegal. Consequently, the late workman is deemed to have continued in service from the date of removal, in view of the inaction on the part of the management in seeking for approval. Subsequently, final orders came to be passed in I.D.No.62 of 1982, in the year 1997.

3. In this background, the late workman had preferred a claim petition in C.P.No.434 of 2005 before the II Additional Labour Court, Chennai, under Section 33(C)(2) of the Act for computation of the arrears



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of wages for the non employment period between 2/1984 to 5/1989 and 2/1994 to 3/2005. Pending the CP, the concerned workman had died and his legal heirs, namely respondents 2 to 4 herein, were impleaded. The Labour Court, had taken into consideration of the order passed in I.D.No.62 of 1982 which was marked as Ex.P11 and had come to the conclusion that a conciliation touching upon the conditions of service of the workman was pending on the date of dismissal and therefore, had come to the conclusion that the order of termination, without seeking for approval of the action taken under Section 33(2)(b) of the Act, would be illegal and therefore, the late workman is deemed to have continued in service from the date of dismissal and accordingly had computed the arrears of wages.

4. Pendency of I.D.No.62 of 1982, touching upon the claim for bonus by the workman of the appellant-Management, is not disputed by the management. The resultant legal effect is that the order of removal from service would deemed to be *ab initio* void and therefore, the Labour Court had rightly computed the arrears of wages for the period of non employment.



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5. The learned Single Judge had also taken all these aspects into consideration and rejected the challenge made by the management to the award. We do not find any infirmity or any other illegality in the said order. Accordingly, there are no merits in this appeal and the same stands dismissed.

5. In view of the dismissal of the present writ appeal, the management shall forthwith disburse all the Death cum Retirement Gratuity (DCRG) benefits including pensionary benefits to the legal heirs/respondents 2 to 4, as expeditiously as possible, in any event within a period of eight weeks from the date of receipt of a copy of this Judgment. Consequently, CMP No.21629 of 2024 is closed.

[M.S.R., J.] [C.K., J.]
01.10.2024

Index : Yes/No
Neutral Citation : Yes/No
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and
C.KUMARAPPAN, J.

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