



W.P.No.21604 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE **M.DHANDAPANI**

W.P.No.21604 of 2013

and

MP.No.1 of 2013

The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram Division – III) Limited,
Kancheepuram.

...Petitioner

Vs.

1. The Presiding Officer,
I Additional Labour Court,
Chennai.
2. Ravindaraman
3. Nagendara
4. Chinnaponnu
5. Ramu
6. Babu
7. Padma
8. Amlu

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the order passed by the 1st respondent in C.P.No.43 of 2008 dated 12.02.2013 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.



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W.P.No.21604 of 2013

For Petitioner : Mr.M.Aswin

For Respondents : R1 – Court
Mr.V.P.Rajendran, for R2 to R8

ORDER

This Writ Petition has been filed seeking quashment of the order of the 1st respondent in C.P.No.43 of 2008 dated 12.02.2013.

2. It is the case of the petitioner that, the respondents 2 to 8 are the legal heirs of the deceased employee viz., Gangan, who joined the services of the petitioner corporation as a Conductor in the year 1990. Since the said Gangan was a habitual absentee and he absented himself from duty unauthorisedly from 02.12.2001 without obtaining prior permission, he was charge sheeted and after following the due process of law, he was ultimately terminated from service on 18.06.2003. Simultaneously, the petitioner corporation filed a petition seeking approval of the said dismissal in A.P.No.205 of 2003 before the Joint Commissioner of Labour (Conciliation Chennai), who in turn, dismissed the same on 02.05.2005. In the mean time, the deceased employee had reached the age of superannuation on 31.01.2004. Whiles, after a lapse



W.P.No.21604 of 2013

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of about four years from the date of superannuation and about three years from the date of dismissal of the approval petition filed by the petitioner, the legal heirs of the deceased employee filed the present Claim petition in C.P.No.43 of 2008 before the 1st respondent and the labour court, on an analysis of the entire materials available before it, ultimately reached the conclusion that the deceased employee was entitled for arrears of wages for the period from 02.12.2001 to 31.01.2004 and also for bonus as well as leave salary of 14 days per year for three years. In all, the 1st respondent held that the deceased employee would be entitled to a sum of Rs.1,59,447/-. Challenging the same, the petitioner has come up with this Writ petition.

3. This Court gave its careful consideration to the arguments advanced by the learned counsel on either side and perused the materials available on record.

4. A perusal of the material documents placed on record particularly the affidavit filed in support of this Writ petition and also the impugned order reveals that, the deceased employee had absented

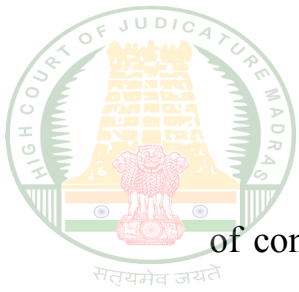


W.P.No.21604 of 2013

himself from duty unauthorisedly and had also failed to report for duty even after passing of dismissal order against him. The contention of the learned counsel for the petitioner corporation that, the principle of 'No work No pay' would get attracted in this case, is justified. The respondents 2 to 8, the Legal heirs of the deceased employee are seeking arrears of wages for the period from 02.12.2001 to 31.01.2004 ie., the period from which the deceased employee was unauthorisedly absent till the date of his superannuation.

5. It is the clear cut case of the petitioner corporation that the deceased employee did not attend work even for one day during the relevant period. No contra evidence is produced by the legal heirs of the deceased employee to show that the deceased employee had approached the petitioner corporation but he was denied employment. Therefore, as rightly pointed out by the learned counsel for the petitioner, the principle of 'No work No pay' would get attracted.

6. It is to be noted that approval petition filed by the petitioner corporation was rejected by the Joint Commissioner of Labour. The bone



W.P.No.21604 of 2013

of contention is only the arrears of wages claimed by the legal heirs for twenty six (26) months, the period during which the deceased employee had not attended work, by way of filing the present claim petition under Section 33(C)(2) of the Industrial Disputes Act.

7. The main aim of the Section 33(C)(2) is to create a mechanism for providing the benefits with regard to the pre-existing rights to an employee, which are computable in terms of money. Therefore, the main ingredient that forms part of Section 33(C)(2) is the pre-existing right of an employee to receive a benefit requires to be established. Therefore, it becomes incumbent on the part of the employee to establish through materials his/her pre-existing right to a certain benefit, which alone would clothe the Labour Court with power to grant the benefit and there is no iota of adjudication which is required to be made by the Labour Court. However, ignoring the elemental question with regard to the power of the Labour Court with regard to adjudication of a claim under Section 33(C)(2), the Labour Court had allowed the present claim petition and ordered for payment of Rs.1,59,447/- in favour of the deceased employee towards arrears of wages for the period from



W.P.No.21604 of 2013

02.12.2001 to 31.01.2004, bonus and leave salary of 14 days per year for three years.

8. This Court is of the considered opinion that the 1st respondent labour court had missed the mark by a mile and extended unwanted sympathy on the legal heirs of the deceased employee. Therefore, this Court is inclined to set aside the order passed by the 1st respondent and accordingly, the impugned order of the 1st respondent/Labour court in C.P.No.43 of 2008 dated 12.02.2013 is set aside.

9. It is brought to the notice of this Court that at the time of granting interim stay, this Court had passed a conditional order directing the petitioner to deposit 50% of the award amount. Since this Court is inclined to entertain this Writ petition and grant the prayer sought for by the petitioner corporation, the petitioner is permitted to withdraw the 50% of the award amount deposited by them before the Labour court with accrued interest, if any.



W.P.No.21604 of 2013

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10. With the above observations and directions, this Writ petition stands allowed with a liberty to the respondents 2 to 8, the legal heirs of the deceased employee to workout their remedy in the manner known to law, if so advised. No costs. Consequently, the connected Miscellaneous petition is closed.

19.02.2025

skt

Index	: Yes / No
Speaking order	: Yes / No
NCC	: Yes / No

To

1. The Presiding Officer,
I Additional Labour Court,
Chennai.
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(Villupuram Division – III) Limited,
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W.P.No.21604 of 2013

M.DHANDAPANI, J.

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