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W.P.No.3750 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.3750 of 2016
and
W.M.P.No.3123 of 2016

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
12, Ramakrishna Road,
Salem – 636 007,
Rep. by its General Manager ... Petitioner

Vs.

1.P.Thangavel
2.The Presiding Officer,
Labour Court,
Salem. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the order passed by the 2nd respondent in C.P.No.15 of 2014 dated 29.04.2015 and quash the same.

For Petitioner : Mr.M.Aswin



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For Respondents : Ms.V.Porkodi
for M/s.V.Ajoy Khose [R1]
Labour Court [R2]

ORDER

This Writ Petition has been filed by the petitioner seeking for a Writ of Certiorari, to call for the records of the order passed by the 2nd respondent in C.P.No.15 of 2014 dated 29.04.2015 and quash the same.

2. Shorn of unnecessary details, the facts necessary for the disposal of this writ petition are as follows:

The first respondent workman was appointed in petitioner Corporation on 24.11.1995 as welder. While so, the petitioner Corporation dismissed him from service on 30.04.2002 for the allegation that, while leaving the workplace, he was frisked by the security staff and he was found in possession of 34 bolts and 20 welding rods. Challenging the same, the workman raised an industrial dispute, which was taken on file as I.D.No.329 of 2002. Vide order dated 05.01.2004, the Labour Court directed the petitioner Corporation to reinstate the workman with back wages and other attendant benefits. Though the workman made a



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written request to the petitioner Corporation to reinstate him into service, no favourable answer was forthcoming. Simultaneously, the workman filed computation petition in C.P.No.574 of 2004 and requested for pending salary. Since the management has filed writ petition in W.P.No.35621 of 2004 challenging the award in ID No.329 of 2002, C.P.No.574 of 2004 was closed without prejudice to the rights of the workman. The first respondent was reinstated into service only on 25.05.2005. This Court had confirmed the order passed in I.D.No.329 of 2002 and dismissed the writ petition on 20.02.2013 and directed the petitioner to settle the balance salary within a period of six months. Thereafter, the first respondent has filed a another computation petition in C.P.No.15 of 2014 before the Labour Court that the petitioner management was liable to pay salary for the period between 05.01.2004 and 25.05.2005, which amounts to Rs.1,61,000/- and the Labour Court passed the impugned order dated 29.04.2015 directing the petitioner to pay a sum of Rs.1,61,263/- towards backwages within a period of three months with 6% interest, failing which, 9% interest to be paid. Challenging the same, the present writ petition is filed.



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3. Learned counsel appearing for the petitioner contended that when there is a clear negation of backwages to the 1st respondent in the earlier round of litigation and this Court having not granted backwages to the 1st respondent in the pending writ petition, but only directed the settlement of terminal benefits upon superannuation, no pre-existing rights accrues to the 1st respondent to claim backwages. However, without appreciating the above, the labour court has granted backwages, which is clearly against the provisions of Section 33(C)(2) of the Act. Therefore, the same deserves to be interfered with.

4. Per contra, learned counsel appearing for the 1st respondent submits that this Court in the writ petition upon superannuation of the 1st respondent had directed the petitioner to settle terminal benefits and other benefits due to the 1st respondent, which would clearly include backwages as well and the aforesaid aspects have been clearly considered by the labour court while passing the impugned order. Therefore, no interference is warranted.

5. Heard the learned counsel appearing for the parties and also



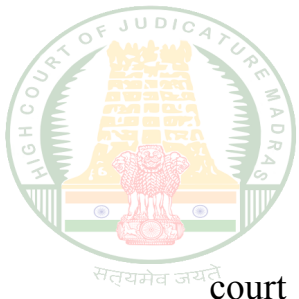
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perused the materials available on record.

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6. The main aim of the Section 33(C)(2) is only for creating 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 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.

7. In the present case, in the earlier round of litigation in I.D.No.329 of 2002, the labour court has ordered reinstatement without backwages, which was assailed before this court and this court had not deliberated on the question of payment of backwages, but had only considered the issue of payment of subsistence allowance u/s 17B during the period of suspension. Upon superannuation of the 1st respondent, this



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court had directed the payment of terminal benefits and other benefits, which are due and payable to the 1st respondent on superannuation on the basis of the order of reinstatement granted by the labour court in I.D.No.329 of 2002. This court has not granted the backwages to the 1st respondent. Such being the case, no right accrues to the 1st respondent to claim backwages. In the absence of any right accruing to the 1st respondent, the petition u/s 33(c)(2) of the Act claiming backwages itself is erroneous as such a petition could be maintained only where a pre-existing right is available to the 1st respondent to have a benefit computed in terms of monetary consideration. In the present case, no such pre-existing right was available to the 1st respondent which could be computed in terms of monetary consideration and when there is no specific direction for payment of backwages, the labour court ought not to have entertained the computation petition and ordered payment of backwages. 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 computation petition, awarding salary for the period from 05.1.2004 to 25.5.2005 to the tune of Rs.1,61,263/- in favour of the workman. The exercise adopted by the



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labour court is arbitrary, perverse and unreasonable and the same does not deserve to be sustained.

8. For the reasons stated above, this Writ Petition is allowed and the impugned order dated 29.04.2015 passed by the 2nd respondent in C.P.No.15 of 2014 is set aside. No costs. Consequently, the connected writ miscellaneous petition is closed.

20.03.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

The Presiding Officer,
Labour Court,
Salem.



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M.DHANDAPANI, J.

sp

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