

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2014

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.Nos.2048 and 2055 of 2002

G.Alagarsamy ... Petitioner in both the WPs

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Management,
Tamilnadu Government Transport
Corporation Ltd.,
(Kumbakonam Division-III),
Karaikudi.

... Respondents in both the WPs

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to C.P.No.29 of 1995 and C.P.No.185 of 1998 on the file of the Labour Court, Madurai and quash the order dated 30.08.2001 in so far as denial of the claim of Rs.1,94,753.45/- and Rs.1,83,924.80/- respectively.

For Petitioner : Mr.D.Saravanan
(in both the WPs)

For Respondents : Mr.V.R.Kamalanathan (for R2)
(in both the WPs) R1 - Court

COMMON ORDER

The short facts of the case are as follows:-

The petitioner preferred the above writ petitions against the common order dated 30.08.2001 made in C.P.No.29 of 1995 and C.P.No.185 of 1998, on the file of the Labour Court, Madurai for the issue of a writ of certiorari and to quash the same in so far as denial of claim of Rs.2,21,481.45 and Rs.1,83,924.80/- respectively towards arrears of backwages, bonus, ex-gratia and performance incentive. He submits that originally he was appointed as driver (Trainee) in the then Pandiyan Roadways Corporation Limited, on

21.01.1981 on daily wages. On appreciation of his work he was made a regular employee on probation with effect from 15.04.1982 on a basic salary of Rs.330/- per month plus Dearness Allowance, House Rent Allowance and other allowances.

2. Thereafter, Pandiyan Roadways Corporation Limited was bifurcated and a new corporation viz., Maruthu Pandiyar Transport Corporation Limited was formed. Thereupon, he was made as an employee of Maruthu Pandiyar Transport Corporation Limited with effect from 01.04.1983 with continuity of service and other service benefits. He had worked more than 31 months continuously without any blemish whatsoever. In such circumstances, he was terminated from service on 31.05.1983 abruptly without assigning any reason.

3. At the point of his termination a dispute with regard to bonus was pending in I.D.No.62 of 1982 on the file of Industrial Tribunal, Madras. His termination had taken place without sanction of law as contemplated under Section 33(2)(b) of Industrial Disputes Act. Hence, he made a complaint No.77 of 1983 in I.D.No.62 of 1982. The Industrial Tribunal after an elaborate enquiry declared that the termination is illegal by an order dated 31.12.1984.

4. After the order of Industrial Tribunal he made a representation to the management for reinstatement and the consequential benefits. However, the Corporation has challenged the said order in W.P.No.4695 of 1985 on the file of this Court which came to be dismissed on 08.09.1994 on merits. On such dismissal of writ petitions also he sought for reinstatement by a letter dated 21.10.1994. Even then, the Management did not choose to provide him an employment. On the other hand, taken out an application in W.M.P.No.3967 of 1998 in W.P.No.4695 of 1985 to restore the said writ petitions as if the same was dismissed for default after a lapse of four years. However, the said application was also dismissed on 02.09.1998 by this Court. Against the said order, the Writ Appeal preferred by the Management also seems to have been dismissed by the Hon'ble Division Bench of this Court at the threshold and the order dated 31.12.1984 made by the Industrial Tribunal, Madras in complaint No.77 of 1983 had become final. On such dismissal, he again made a representation on 12.12.1998 for re-instatement and backwages and other attendant benefits. However, the Management is very adamant and adopted recalcitrant attitude for some how or other.

5. As the management neither re-instated him into service nor paid the arrears of backwages, he filed claim petition in C.P.No.29 of 1995, on the file of Labour Court, Madurai for a sum of Rs.2,46,481.45/- together with interest 12% p.a. and costs viz.,

a) Backwages for the period from 01.06.1983 to 31.12.1994	: Rs.2,19,753.45
b) Bonus at 8.33% for the accounting year from 1982-83 to 1993-94	: Rs. 12,462.30
c) Ex-gratia payment for the period from 1982-83 to 1993-94	: Rs. 8,840.70
d) Performance Incentive payable every year for the period from 1983-1994	: Rs. 5,425.00

Total	Rs. 2,46,481.45

6. Further he had also filed another claim petition for the subsequent period in C.P.No.185 of 1998 on the file of the Labour Court, Madurai for a sum of Rs.1,93,924.40/- together with interest at 12% p.a. and costs viz.,

a) Backwages for the period from 1/95 to 8/98	: Rs.1,17,049.40
b) Bonus and ex-gratia payment for the period from 1995-96, 1996-97 and 1997-98	: Rs. 17,100.00
c) Performance incentive payable for the year 1995, 1996, 1997.	: Rs. 1,775.00

Total	Rs. 1,93,924.80

7. He submits that the management did not provide him an employment and other benefits in compliance of the order of Industrial Tribunal which confirmed by this Court but chosen to contest his claims on futile and untenable grounds which are all against the Industrial law and also the settled principle of the law of the land. Both the claim petitions were tried together. He examined himself as PW1 before the Labour Court and marked Ex.P1 to P4. No witness was examined on behalf of the Management. However, marked documents vide Ex.R1 to R12.

8. He submits that the Labour Court has passed a common order in C.P.No.25 of 1995 and 185 of 1998 on 30.08.2001 directing the payment of Rs.25,000/- and Rs.10,000/- respectively totaling in all Rs.35,000/-, but rejected his valid claim to the tune of Rs.4,04,406.25/- on the reasons which are all contrary to law and that portion of the order is liable to be set aside. Hence, these writ petitions.

9.The second respondent submits that Thiru.G.Alagarsamy, Driver of second respondent Corporation was dismissed with effect from 31.05.1983 during the period of his probation since he was convicted by the criminal Court for his involvement in fatal accident while he was working as driver in bus TMN-5800 on 18.10.1982. He has filed complaint No.77/83 before the Industrial Tribunal, Chennai and the Tribunal struck down the order of the termination on 31.12.1984. The Management has preferred W.P.No.4695 of 85 before this Court and the same has been decided as exparte on 08.09.1994. The restoration petition filed by the second respondent Corporation on 26.12.1994 also dismissed on 02.09.1998. Then Thiru.G.Alagarsamy was reinstated into service with continuity of service with effect from 26.02.2002 in the scale of pay 3290-60-3770-65-4745. He has filed two claim petitions namely 29 of 1995 and 185 of 1998 claiming wages and other benefits before the Labour Court, Madurai. The second respondent Corporation has defended the case that a complaint under section 33 (a) is not maintainable and the petitioner is not a worker in the concerned dispute, since he was only apprentice at the time of bonus dispute that is pending before the Industrial Tribunal, Chennai.

10.The respondent submits that the petitioner was gainfully employed during the period of January 1995 to August 1998 at any rate the petitioner could not have survived on free air and should have earned some money during this period. The award passed by the Industrial Tribunal in Complaint No.77 of 1983 is an 'nonest', as one passed without jurisdiction. Thiru.T.Thangasamy, Senior Counsel appeared on behalf of the Corporation and on hearing arguments on both the sides, the Labour Court awarded an amount Rs.25,000/- in C.P.No.29/95 and Rs.10,000/- in C.P.No.185/98 totally Rs.35,000/-. The respondent Corporation has sent the cheque to the Labour Court to make payment to the petitioner Thiru.G.Alagarsamy. But the Labour Court advised them to pay the cheque directly to the petitioner. But the petitioner refused to receive the cheque.

11.He further submits that it is true that the petitioner has filed C.P.No.185 of 1998 claiming arrears of backwages, bonus, exgratia and performance incentive to the tune of Rs.1,83,924/-. The respondent Corporation has defended the case in Claim Petition No.29 of 1995 and 185 of 1998 stating that the employees are not covered under the workman involved in the dispute pending before the Tribunal. Accepting their stand, the Labour Court awarded only Rs.25,000/- as compensation in C.P.No.29 of 1995 and Rs.10,000/- in C.P.No.185 of 1998. It is pertinent to note that during the period of non employment the petitioner would have gainfully been in employment. No payment will be paid for the period of non employment following the principle of no work no pay. The Hon'ble Supreme Court also held in various case that the worker has to prove that he was not gainfully employed anywhere during the period of his non employment.

12.He further submits that the order of the Labour Court is based on the materials produced in the claim petition. The petitioner is not covered under the pending dispute before the Industrial Tribunal. Hence, the order of the Industrial Tribunal is not true. However their management has preferred writ petitions challenging the order of the Industrial Tribunal which was decided exparte. The restoration petition filed by their management also dismissed. The Writ Appeal filed by their Management also dismissed.

13.He submits that the Labour Court has calculated the compensation after looking into all aspects. It is the duty of the petitioner to prove before the Labour Court that he has not been gainfully employed anywhere during his alleged non employment period. The averments in 'para f' is not true. This Court decided the writ petitions as exparte. The averments in the 'para h' is not true. The petitioner is now working in their Corporation and getting time scale of pay with all benefits. The petitioner having seven months remaining period of service is going to retire on 31.5.2010. The cheque for Rs.26,479/- dated 21.2.2002 and another cheque for Rs.10,592/- dated 21.2.2002 were not received by the petitioner. It is therefore prayed that this Court may be pleased to dismiss the writ petitions as devoid of merits.

14.The highly competent counsel Mr.D.Saravanan appearing for the petitioner submits that the petitioner had been appointed as a driver on 21.01.1982 on daily wage basis. Thereafter, he had been appointed as regular employee on probation for a period of six months from 15.04.1982 on a basic salary of Rs.330/- + allowances. The Transport Corporation had been reconstituted and he was appointed as an employee of Marudu Pandiyar Transport Corporation with effect from 01.04.1983, with continuity of service and other service benefits. He had worked with the Management for more than 31 months continuously without any adverse remarks. Under the circumstances, he had been terminated from service on 31.05.1983. At the time of termination, a case in I.D.No.62 of 1982 is pending on the file of Industrial Tribunal, Madras regarding the issue of bonus. Thereafter, the Tribunal had conducted detailed enquiry and it was found that the petitioner's termination was illegal. Therefore, the petitioner made a representation to the Management for reinstatement and consequential benefits. The Corporation had challenged the Industrial Tribunal award before this Court by way of writ proceedings but the same was dismissed. Hence, the petitioner made representation to reinstate him in service. The same was not considered. The Management also filed a Writ Appeal against the single Judge order and the same was dismissed. As such, the award passed by the Tribunal had become final.

15.The very competent counsel further submits that the Management neither reinstated him into service nor paid the backwages of arrears. Hence, he filed a claim petition No.29 of 1999, on the file of the Labour Court, Madurai and claimed a sum of Rs.2,46,481.45

together with interest at the rate of 12% and costs. The petitioner had also filed another claim petition in C.P.No.185 of 1998 for subsequent period on the file of Labour Court, Madurai and claimed a sum of Rs.1,93,924.40 together with interest at the rate of 12% and costs. The Management did not produce him with an employment and other benefits. Both the claim petitions were tried together and the petitioner was examined as PW1 and he had marked four exhibits. Consequently, the Labour Court had passed a common order in C.P.No.25 of 1995 and C.P.No.185 of 1998 dated 30.08.2001 and directed the Management to pay a sum of Rs.25,000/- and Rs.10,000/- respectively in totaling all Rs.35,000/-. But the Labour Court rejected the entire claim and partly allowed the said claim for a meagre amount. The very competent counsel further submits that the petitioner is entitled to receive the benefits for the period from 01.06.1983 to 31.12.1994, amounting to a sum of Rs.2,46,481.45 and for the period from 01.01.1995 to 30.08.1998 for a sum of Rs.1,93,924.40. These amounts have to be paid to the petitioner but the Tribunal erroneously granted a meagre sum.

16.The very competent counsel Mr.V.R.Kamalanathan appearing for the second respondent submits that the petitioner was dismissed on 31.05.1983 during the period of his probation since he was convicted by the criminal Court for his rash and negligent driving thereby causing a fatal accident. The employee had filed a complaint No.73 of 1983 before the Industrial Tribunal, Chennai and the Tribunal struck down the order of termination on 31.12.1984. The Management has filed the writ petitions challenging the said impugned order passed by the Industrial Tribunal and the same was dismissed by this Court. Hence, the employee has been reinstated into service with continuity of service with effect from 26.02.2002 with regular salary. Under the circumstances, the petitioner filed two claim petitions and claimed huge amount of benefits. Further, the Labour Court has no original jurisdiction to try the claim petitions. However, the Corporation complied with the common order passed by the Labour Court in favour of the petitioner. Hence, the very competent counsel entreats the Court to dismiss these writ petitions.

17.On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the impugned order of the Labour Court, this Court is of the view that the petitioner had committed a fatal accident while he was undergoing probation period and he was convicted by the criminal Court for rash and negligent driving and committing a fatal accident. Therefore, both the writ petitions do not have enough force to allow them. Hence, both the writ petitions are dismissed.

18.In the result, both the writ petitions are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs
To

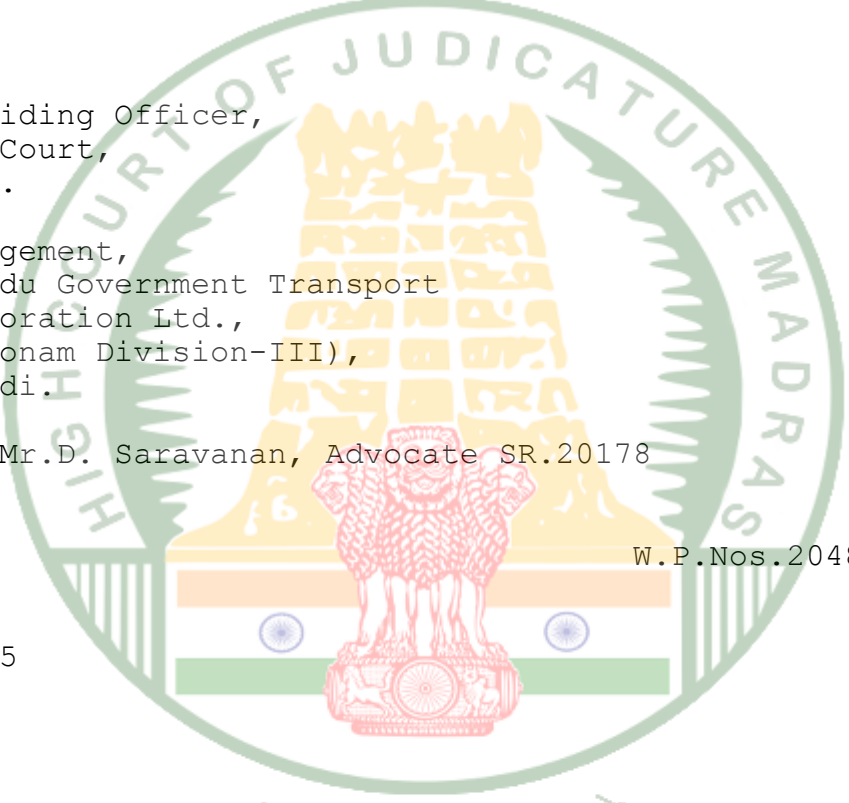
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+ 1 cc to Mr.D. Saravanan, Advocate SR.20178

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