



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2023

PRONOUNCED ON : 24.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**Writ Petition No.33086 of 2005**

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1.P.Ayothi (deceased)

2.Samboornam

3.Jayanthi

4.Packiaraj

5.Venkatesan

6.Nagarajan

..Petitioners

VS

1.The Management of

Tamil Nadu State Transport

Corporation (Salem Division-2)

Ltd., now renamed as Tamil Nadu

State Transport Corporation

(Salem) Ltd., 12 Ramakrishna Salai

Salem-7.

2.The Presiding Officer

Labour Court, Salem.

..Respondents



Prayer: Writ petition filed under Article 226 of Constitution of India praying to

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issue a writ of certiorarified mandamus calling for the records pertaining to the Award dated 27.03.2003 in I.D.No.522/2000 passed by the 2<sup>nd</sup> respondent, quash the same in so far as depriving the petitioner backwages, continuity of service, other attendant benefits, compassionate appointment, lumpsum death benefit and other terminal benefits including pension and consequently direct the 1<sup>st</sup> respondent to pay the petitioner backwages and other attendant benefits by giving annual increments, pay revision, lump sum death benefits and all terminal benefits including pension.

For Petitioner : Mr.V.Ajoy Khose, Senior counsel  
for Mr.R.Krishnaswamy

For respondents : Mr.R.Babu for R1  
R2-Court.

**ORDER**

This writ petition is filed seeking to quash the Award dated 27.03.2003 passed in I.D.No.522/2000 by the 2<sup>nd</sup> respondent-Labour court, in so far as depriving backwages, continuity of service, other attendant benefits, compassionate appointment, lumpsum death benefits and other terminal benefits including pension in respect of workman who died during the pendency of the I.D. The petitioners further pray for a direction to the 1<sup>st</sup>



respondent-Transport Corporation to pay the petitioner backwages and other attendant benefits by giving annual increments, pay revision, lump sum death benefits and all terminal benefits including pension.

2. The deceased P.Ayothi joined the services of the first respondent transport corporation as a conductor on 01.04.1981. He put 19 long years service. The workman while serving both night and day shifts, developed health problems like ulcer, diabetes and vision defects. Since he has to take care of his big family, he could not spend much amount for his medicines and treatment and so sought to refer him to Perundurai Medical college for treatment. Since the workman was affected by right eye vision defect, he was taken to Arvind Hospital, Madurai. Therefore, the workman applied for personal leave initially for the period from 26.08.1999 to 31.08.1999 and later upto 02.09.1999. The said leave got sanctioned. Again the workman had to continue his treatment in Madurai from 28.09.1999 to 15.10.1999. As such, the workman was unable to attend duty or submit leave application for the period after 03.09.1999.

3. The 1st respondent issued charge memo dated 09.11.1999 alleging



that the workman was unauthorisedly absent from 03.09.1999 to 24.09.1999.

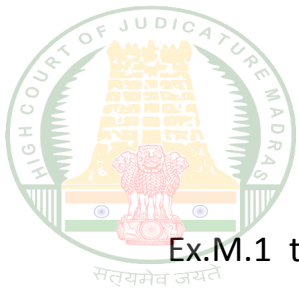
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Later, the first respondent also ordered for an enquiry into the charges. Though the workman replied that due to his ill health, he was absent, the first respondent ordered for enquiry and conducted two separate enquiries and also issued two separate second show cause notices. Though the petitioner explained that due to his severe and acute health disease and that as he underwent treatment for the same, he was absent, the first respondent rejected the said explanation and dismissed the workman from service by order dated 31.03.2000.

4. Against the said order of dismissal, the workman raised an industrial dispute. Since the conciliation ended in failure, he took up the matter before the 2nd respondent in I.D.No.522/2000.

5. During the pendency of the dispute, the workman became bedridden and died on 20.12.2000 after 9 months from the date of his dismissal. The legal heirs of workman were impleaded as petitioners in I.D.No.522 of 2000.

6. In the I.D., Ex.W.1 to W.9 were marked on the side of petitioners and



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Ex.M.1 to M.17 were marked on the side of the first respondent. But no

witness was examined on both sides. After hearing the arguments, the 2nd respondent-Labour Court passed an Award dated 27.03.2003, setting aside the dismissal of the workman and directed the first respondent-corporation to treat the period of absence from 3.9.1999 to 30.03.2000 as medical leave and further directed the first respondent-corporation to pay wages and other benefits for the said period, within a period of 3 months and in default to pay the amount with 6% interest.

7. The 2nd respondent-Labour court held that the workman could not attend duty only due to sickness and that he died within 7 or 8 months from the date of dismissal due to the very same sickness. The learned Judge, Labour court pointed out that the workman had given proper reasons/explanation for his absence and hence, the punishment of dismissal for unauthorised absence was harsh and unjustified, hence, modified the punishment. The Labour court also held that the relief sought for by the workman viz., reinstatement could not be given as the workman died.

8. As regards compassionate appointment for the legal heirs of the



deceased workman, the learned Judge observed that it is for the Transport Corporation to consider the said claim.

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9. The learned Judge held that due to unauthorised absence, backwages cannot be granted. However, taking note of the medical records exhibited during the trial, the learned Judge pointed out that the period of absence can be treated as leave period if he is eligible for the same. The learned Judge pointed out that on such consideration, salary for the said period and other benefits can be extended to the legal heirs of the deceased workman. The learned Judge concluded that the legal heirs/petitioners are not entitled to any other relief sought for by them.

10. The learned Senior counsel appearing for the petitioners/legal heirs of workman would submit that since the petitioners were not given monetary benefits as per the Award, petitioners made repeated representation and lawyer's notice to the 1<sup>st</sup> respondent/Transport Corporation to pay wages and other admissible benefits and also PF, gratuity and pension. However, after



adjusting the period of absence as leave, the first respondent paid only a sum of Rs.901.37. The first respondent, by letter dated 11.08.2004 informed that the workman had taken a sum of Rs.78,003/- from the Employer Contribution of PF, therefore, the remaining balance sum of Rs.7,407/- in the workman's PF account was fully adjusted towards PF Loan. Further, it is stated that the entire sum of Rs.40,816.95 payable to the family of the workman was totally adjusted towards PF loan and that in fact the petitioners/legal heirs to remit a balance amount of Rs.29,775.05 within a week time. Aggrieved by the said action of the 1<sup>st</sup> respondent, the petitioners are before this court.

11. The learned Senior counsel would submit that the adjustment of PF, gratuity towards PF loan itself is without jurisdiction. The first respondent-Transport corporation not even arranged for payment of monthly pension to the legal heirs of the workman. The learned senior counsel would rely upon the decision reported in **(2012) 3 SCC 178 [Krushnakant B.Parmar Vs. Union of India and another]** and submitted that since the unauthorised absence of the workman was not wilful, such absence cannot be held to be wilful and cannot be viewed as a misconduct. Since it was the specific contention before the



Labour court that due to ill health, the workman was prevented from attending duty, the workman is entitled to reinstatement and back wages to the extent of 50%. In the event of granting the relief of reinstatement with backwages, even though the workman died, the benefits would reach the hands of the legal heirs of the workman, who died during the pendency of the I.D., after suffering various health problems.

12. Per contra, the learned counsel for the 1<sup>st</sup> respondent would submit that the workman was unauthorisedly absent to duty from 03.09.1999 onwards without any prior intimation and prior permission. Since he did not report about his absence, the said act was a misconduct as per Section 19(1)(f) of the certified standing order of the Corporation. Since the explanation given by the workman was not found satisfactory to the charge memos issued, enquiry was conducted and based on the report of the enquiry officer and his findings, punishment of dismissal from service was passed on 31.03.2000. The workman raised I.D. Before the conciliation officer and after failure report, he filed I.D., before the Labour court. During the pendency of the I.D., workman died on 21.12.2000 and so, the petitioners were impleaded in I.D. The learned





counsel for the 1<sup>st</sup> respondent-Transport corporation while reiterating the

counter averments submitted that the employee even on previous occasions, absented to duty and punished for the same.

13. The learned counsel would further submit that as per the Award of the Labour Court, taking note of the leave eligibility of the workman, as per Leave Rules, the service period was adjusted. Further, bonus, exgratia amount of Rs.12,334/- for the year 1999-2000 was paid to the legal heirs @ Rs.901.37 each. As per TNSTC Employees Pension Fund Rules, dismissed employees are not eligible for pension, as such , he was not eligible for pension. Since the employee was sanction non refundable loan from the employer's share of Provident Fund. Consequent to introduction of Pension scheme w.e.f. 01.09.1998, the non refundable loan drawn by the employees from the employer's share prior to the introduction of Pension scheme was recovered from all such employees. Rs.78,003/- drawn by the employee towards non refundable loan from employer's share and refundable loan interest Rs.1,742/- were due from him. Rs.9.149/- which was at his credit in the Provident Fund account and the gratuity amount of Rs.49,985/- payable to the deceased-



employee was fully adjusted against the non-refundable loan obtained from the Provident Fund Account and other dues payable by the deceased petitioner and the deceased was yet to remit the balance due amount of Rs.29,779.05 to the Provident Fund Trust.

14. The learned Standing counsel would submit that the Labour court has passed Award to the effect that the petitioners are not entitled for any other remedies. Hence, the petitioners have no right to claim pension and compassionate appointment etc. It is further stated in the counter affidavit filed by the transport corporation that Provident fund amount and gratuity amount payable to the employee was fully adjusted against the dues payable by him and the order of the Labour court was fully complied.

15. Heard both sides and perused the records carefully.

16. In the present case, the Labour court held that the absence of workman from duty was due to his health condition. The undisputed fact is that due to his continued treatment, he cannot attend duty and so the absence



was proved as not wilful. The findings of the Labour court is that due to medical grounds, he was absent and accordingly, set aside the dismissal order passed by the transport corporation. In such view of the matter, the workman should be treated as deemed to be in service till the date of his death. As a natural consequence, the workman is entitled for full backwages and all other consequential and attendant benefits, to which he is entitled to. In the light of such observation, the first respondent is directed to workout the monetary benefits to which the petitioners, being the legal heirs of the workman are entitled to and shall pay the same within a period of four months from the date of receipt of a copy of this order.

17. The writ petition is allowed on the above terms. No costs.

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24.03.2023

Index:Yes/No

Speaking/Non-speaking order

Neutral citation:Yes/No



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VERDICTUM.IN



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J. NISHA BANU, J.

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To

1.The Management of Tamil Nadu State Transport Corporation (Salem Division-2) Ltd., now renamed as Tamil Nadu State Transport Corporation (Salem) Ltd., 12 Ramakrishna Salai, Salem-7.

2.The Presiding Officer, Labour Court, Salem.

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