

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Contempt Petition No.1729 of 2016

R.Sugumaran

...Petitioner

Vs

Mr.Shanmugasundaram

The Management,

Tamilnadu State Transport Corporation (Salem) Ltd,

Salem Region, Salem,

Rep by its General Manager.

...Respondent

Petition filed under Section 11 of Contempt of Courts Act praying to punish the respondent for disobeying the order passed in W.P.No.21108 of 2014 dated 08.01.2016.

For Petitioner : Mr. K.S.Jeyaganeshan

For Respondent : Mr. P.Paramasivados

ORDER

Heard Mr.K.S.Jeyaganeshan, learned Counsel appearing for the Petitioner and Mr.P.Paramasivados, learned Counsel appearing for the Respondent.

2.This Contempt Petition has been filed alleging wilful disobedience of the order and directed in W.P.No.21108 of 2014.

3.The said writ petition filed by the

Respondent/management challenging the order passed by the Special Joint Commissioner of labour, Chennai in Approval

Petition in A.P.No.157 of 2013 dated 31.10.2013. The said writ petition filed by the management along with another connected matter was disposed of by a common order dated 08.01.2016. At the stage, it would be worthwhile to refer to the operative portion of the order, in which certain observations and directions have been given, which reads as follows:

"7.As pointed out earlier, the Apex Court, while interpreting the jurisdiction of the Tribunal while considering an application under Section 33(2) (b) of the Act, pointed out that the Tribunal should see whether the employer has paid or offered to pay the wages. In the instant case, the employer has not only paid wages, but offered to pay the difference in wages and the difference in wages has also been paid subsequently.

8.In the light of the above, the impugned orders calls for interference. Accordingly, the impugned orders in Approval Petition Nos.156/2013 and 157/2013 dated 31.10.2013 are hereby set aside.

9.Having held that the orders refusing to grant approval is not tenable, this leaves us with the only question as to what would be the appropriate punishment in the instant case.

10.It may be true that the workmen were charged of righteous behaviour and abusing the senior officials when there was a discussion going on in the rest room. It is pointed out that the employees/workmen would be attaining the age of superannuation shortly.

11. Considering the overall circumstances of the case and the fact that the workmen were out of employment from the year 2010 onwards and one of the employees, viz., R. Sugumaran, did not even have the benefit of wages under section 17-B of the Act, these are the fit cases where the petitioner/Management should consider imposing any other lesser punishment other than dismissal and such re-consideration shall be made by the petitioner/Management within a period of three weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed."

4. Thus in terms of the above order though this Court interfered with the orders passed in the Approval Petition, the Court considered as to what would be the appropriate punishment to be imposed on the workmen. Thus, considering the overall circumstances of the case and the workman being out of the employment since 2010, the petitioner herein not having been paid the wages under Section 17-B of the Industrial Disputes Act, this Court directed the management to impose any other lesser punishment other than dismissal and such re-consideration should be made within three weeks from the date of receipt

5. According to the learned counsel for the respondent/management they have passed orders on 18.07.2016 reinstated the petitioner and his pay has been reduced by five stages. However, it is pointed out by the learned counsel for the petitioner that another order passed earlier on 29.04.2016 in which the entire past services put in by the petitioner has been given a go-by. On perusal of the order dated 29.04.2016 though it appears to be an order calling upon the petitioner to come for verification of his physical fitness, in Clause 1 therein, it is stated that the period during which the petitioner was out of employment will not be taken into consideration for any purpose. If such is the order, then the respondent would be guilty of committing contempt, whereas if they stand by the order dated 18.07.2016, they would stand exonerated.

6. The learned counsel for the respondent would submit that they have implemented the order dated 18.07.2016. In that view of the matter, the condition imposed in Clause 1 of the order dated 29.04.2016 is held to be unsustainable and cannot be implemented and there will be a direction to respondent Corporation to take into consideration the period during which the petitioner was out of service for all other purposes except for monetary purpose. In other words that period should be reckoned while computing the

total length of service of the petitioner as this would be required for computing pension.

7. With the above direction, this Contempt Petition is disposed of. No costs.

SD/
JOINT REGISTRAR (OS)

//Certified to be true copy//

Dated at Madras this the day of 2016.

COURT OFFICER (O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

CO/06/09/2016

One CC to M/s.P.Paramasivados, Advocate, SR.10223/2016

To

Mr. Shanmugasundaram
The Management,
Tamilnadu State Transport Corporation (Salem) Ltd,
Salem Region, Salem,
Rep by its General Manager.

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