



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
W.P(MD).No.17226 and 17227 of 2014

K.Manivasagam

...Petitioner in W.P.(MD).No.17226/2014

Srihari Roa

...Petitioner in W.P.(MD).No.17227/2014

Vs.

1.The Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam Division III,
rep.by its Managing Director,
Maruthupathi, Karaikudi.

2.The General Manager,
Tamil Nadu State Transport Corporation Ltd,
Maruthupathi, Karaikudi.

3.The Branch Manager,
Tamil Nadu State Transport Corporation Ltd,
No.7, Collector Office Road,
Tiruchirappalli.

...Respondents in both WPs

Writ Petitions filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the respondents to implement the orders of the trial court vide its judgment and decree in O.S.No.2728 of 1996, dated 30.10.2006 being merged with the orders of appellate court in A.S.No.244 of 2006, dated 27.09.2013, by giving all monetary benefits to the petitioners considering their deemed service till their age of superannuation.

For petitioner : Mr.Hariharan Nair for
M/s.Nisha Banu

For respondents : Mr.D.Sivaraman

COMMON ORDER

Since the issue involved in both the Writ Petitions is one and the same, they are taken up together and disposed of, by this common order.

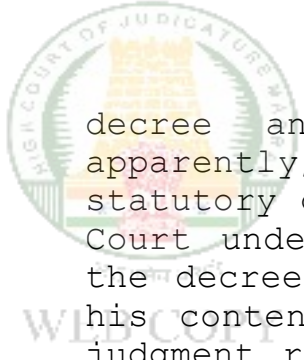
2. The petitioners herein, after getting a favourable decree both before the trial Court as well as before the appellate Court, have come to this Court, seeking to implement the order passed by the Court below.

<https://hcservices.ecourts.gov.in/hcservices/> The case of the petitioners is that while both the petitioners were the employees of the respondent Corporation, they were issued with a charge memo, on 10.07.1990 by the respondent



Corporation. The charges are that the petitioners are responsible for making reduced entries in the registers with regard to the receipt of white teak woods from Pudukottai Body Building Shop and Anna Transport Corporation, for being responsible for deficient of 9.1860 cubic meter white teak woods valuing Rs.33,220.25 and for irresponsible management, for transactions pertaining to the year 1986. Eventually, the respondent Corporation proceeded with the disciplinary proceedings and appointed an Enquiry Officer, who in turn, found guilty for alleged misconducts done by the petitioners. Thereafter, the respondents issued a second show cause notice to the petitioners, on 22.04.1993. The petitioners preferred a petition before the Government against the findings of the Enquiry Officer through representations dated 14.05.1993 and 20.05.1993 respectively and simultaneously gave explanation to the second show cause notice to the respondent Corporation. But, the respondents, on 24.05.2003, without considering the explanations submitted by the petitioners, passed the final orders dismissing the petitioners from service on 02.08.1990. As against the order of dismissal, the petitioners preferred an appeal before the then Managing Director Maruthu Pandiar Transport Corporation and since there was no progress in the appeal, the petitioners filed O.S.No.2728 of 1996 before the District Munsif Court, Tiruchirapalli to set aside the order of termination by declaring it as null and void and consequently prayed for re-instatement with all service and monetary benefits. The Transport Corporation also filed a suit in O.S.No.1400 of 2004 for recovery of amount as alleged in the charge memos issued to the petitioners. Both the suits were jointly tried by the Court below and a common order was passed, on 30.10.2006, allowing the claim of the petitioners and negating the contentions of the transport Corporation. Aggrieved over the same, the transport Corporation preferred appeals in A.S.No.243 and 244 of 2006, before the Principal Subordinate Judge, Tiruchirapalli. The appeals also met the same fate as that of the original suit. Therefore, the petitioners are before this Court to implement the order of the Court below.

4. Learned counsel for the petitioners submitted that insofar as the first part of the prayer, namely, to reinstate the petitioners in service could not be implemented, as the petitioners have already become attained the age of superannuation, however, with regard to the second part of the prayer, the transport Corporation is obliged to do so as the order of the appellate Court has become final and the transport Corporation has not filed a Second appeal. He further submitted that once the order passed by the respondent Corporation is set aside by the competent civil court, a duty is cast upon the transport Corporation to implement the same in letter and spirit. In other words, when there is no second appeal filed by the transport Corporation, the decree obtained by the petitioners have attained finality. More so, since the transport Corporation is one of the instrumentalities of the State, they are governed by the



decree and judgment passed by the Civil Court. However, apparently, the transport Corporation have failed to do their statutory duties. Therefore, the petitioners have come before this Court under Article 226 of the Constitution of India to execute the decree and judgment passed by the Court below. In support of his contention, he also garnered support from the Supreme Court judgment reported in (1998) 2 SCC 510, *State of M.P Vs. Mangilal Sharma*.

5. Heavy objection has been laid by the learned Standing Corporation regarding maintainability of the Writ Petitions. When the petitioners were dismissed from service, after holding proper enquiry, they ought not to have approached the Civil Court challenging the correctness of the dismissal order. Having approached the wrong forum, it is not open to them to come to this Court for executing the decree and judgment obtained from the Court below. The petitioners cannot convert a Writ Court into one of Executing Court. Further, it is not correct to state that the transport Corporation has not preferred any appeal as against the appellate Court. The transport Corporation has filed a Second Appeal and it is in the stage of SR.No.16148 and 16149 of 2014.

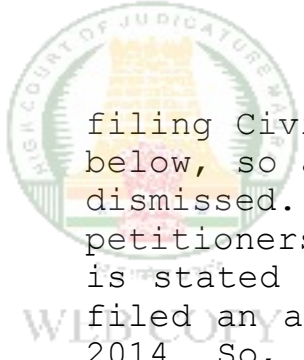
5.1. In support of his contentions, he placed the following judgments:-

- (i) *The Government of Tamil Nadu, Madras and another Vs Rajamanickam & two others* reported in 1996 (II) CTC 211.
- (ii) *Swamy Atmananda Vs. Swami Bodhananda and others* reported in (2005) 3 SCC 734.
- (iii) *T.E.Vijayaraghavan Vs. The Commissioner, H.R&C.E.Dept,* reported in 2015 (5) CTC 169.

6. On the submissions made by the learned Standing Transport Corporation, the learned Counsel for the petitioner submitted that when the petitioner has no other alternative remedy, there is nothing wrong in approaching the Writ Court. If the petitioners are again driven to the Civil Court, it will take another two decades, where, the petitioners could not see the light of the day. Due to passage of time, the petitioners have already attained the age of superannuation and the next portion of remedy available to the petitioners is only to avail of the terminal benefits which cannot be thrashed out by the transport Corporation by citing technicalities.

7. Heard the submissions made on either side and perused the materials available on record.

8. I find full force on the submissions made by the <https://hccases.mca.gov.in/hccases/> Transport Corporation. Admittedly, both the petitioners have approached the wrong forum by challenging the correctness of the dismissal order of the Transport Corporation by



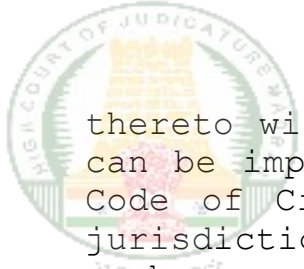
filing Civil Suits. The said Civil Suits were allowed by the Court below, so also, the appeal filed by the transport Corporation were dismissed. In other words, in both the Civil Courts, the petitioners were able to obtain a favourable decree. However, it is stated that as against the same, the transport Corporation has filed an appeal which is in the stage of SR.No.16148 and 16149 of 2014. So, when the second appeal, though it is belatedly filed by the Transport Corporation is pending, this Court cannot invoke its extraordinary jurisdiction, in the matter of this nature. In this connection, it is pertinent to point out the judgment relied by the transport Corporation. In the case of the *Government of Tamil Nadu, Madras and another Vs Rajamanickam & two others* reported in 1996 (II) CTC 211, in paragraph No.2, it is held as follows:-

2..... When once the first respondent in each of these appeals had obtained a decree in the Court of the District Munsif, Valangaiman for declaration and injunction, it is for them to execute the said decree and take appropriate proceedings to prevent the defendants therein from interfering with their possession. Instead of doing so, they have chosen to file these Writ Petitions. It is not known how the Writ Petitions are maintainable at all. This Court cannot be used as a sort of executing Court to implement the decrees passed by the District Munsif. The learned Judge should have simply dismissed the Writ Petitions directing the petitioners therein to approach the District Munsif for appropriate reliefs."

Similarly, in the case of *Swamy Atmananda Vs. Swami Bodhananda and others* reported in (2005) 3 SCC 734, in paragraph No.2, it is held as follows:-

"2. A decree passed by the Civil Court must be passed in terms of the provisions contained in the Code of Civil Procedure. The Writ Petition is not the appellate remedy therefor. In that view of the matter, the impugned judgment cannot be sustained, which is set aside, accordingly. The appeal is allowed. It, however, goes without saying that the first respondent herein shall be entitled to execute the decree in accordance with law."

Further, in the case of *T.E.Vijayaraghavan Vs. The Commissioner, H.R&C.E.Dept*, reported in 2015 (5) CTC 169, this Court by quoting the judgment reported in the *Government of Tamil Nadu, Madras and another Vs. Rajamanickam and two others*, 1996 (2) CTC 211 (DB), wherein, the Writ Petition filed by the land owners, for issuance of Mandamus, restraining the respondents therein from interfering in any manner with the right of the petitioners to be in possession and enjoyment of the properties, which was the subject of the Civil proceedings, was held to be not maintainable. While doing so, the Division Bench observed that whatever the decision is rendered by the Civil Court ultimately, the parties



thereto will be bound thereby and the decision of the Civil Court can be implemented by appropriate proceedings provided for in the Code of Civil Procedure and there is no question of exercising jurisdiction under Article 226 of the Constitution of India for such purposes.

9. In view of the categorical findings rendered by this Court stating that the Writ Court is not the appropriate Court to execute the order passed by the Civil Court below, this Court is unable to answer the prayer in favour of the petitioners in the Writ Petitions. When Law prescribes that certain things to be done in a certain manner, this Court cannot by-pass the procedure laid down, in the matter of this nature. More particularly, this Court cannot stretch the provisions available to it, beyond the scope of the Act.

With the afore-said observations, both the Writ Petitions stand dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

- 1.The Managing Director,
The Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam Division III,
Maruthupathi, Karaikudi.
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