

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

Contempt Petition No.2744 of 2015 in W.P.No.8706 of 2010
and

Review Application No.655 of 2017 in W.P.No.12402 of 2010
and

Review Application No.656 of 2017 in W.P.No.8706 of 2010

Contempt Petition No.2744 of 2015:

N.Jayabalan,
Vanniyanallur Gramam and Post,
Cheyyaar Taluk,
Kancheepuram District-603 401.

... Petitioner

vs.

Balakrishnaswami
Managing Director,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai 600 002.

... Respondent

Contempt Petition filed under Section 11 of Contempt
of Courts Act, 1971 seeking to punish the respondent for
having committed willful disobedience of the order of this
Court made in W.P.No.8706 of 2010, dated 10.09.2014.

For Petitioner : M/s.S.T.Varadarajulu

For Respondent : Mr.P.Kannan Kumar

Review Application Nos.655 & 656 of 2017:

The Administrator,
Tamil Nadu State Transport Corporation Employees,
Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai 600 002.

... Review Petitioner in both
Review Applications

vs.

1. Metropolitan Transport Corporation (CH) Ltd.,
rep. by its Senior Deputy Manager (HRD)
Pallavan Illam,
Anna Salai,
Chennai 600 002. ... 1st Respondent in both Review
Applications
2. N.Jayabalan ... 2nd Respondent in both Review
Applications
3. The Presiding Officer,
II Additional Labour Court,
Chennai 600 104. ... 3rd Respondent in
Review Application No.655 of 2017

Review Application Nos.655 & 656 of 2017 filed under
Order 47 Rules 1 and 2 read with Section 114 C.P.C. against
the common order dated 10.09.2014 passed in W.P.No.12402 of
2010 and W.P.No.8706 of 2010, respectively.

For Review Petitioner in both
Review Applications : Mr.P.Paramasiva Doss

For 1st Respondent in both
Review Applications : Mr.P.Kannan Kumar

For 2nd Respondent in both
Review Applications : Mr.S.T.Varadharajulu

C O M M O N O R D E R

Since the issue involved in the Contempt Petition and the Review Applications is one and the same, the cases are taken up for disposal by a common order.

2. The writ petitioner in W.P.No.8706 of 2010 has filed the above Contempt Petition seeking to punish the respondent/Managing Director, Metropolitan Transport Corporation for wilful disobedience of the order dated 10.09.2014 passed by this Court in the said Writ Petition. After filing of the said Contempt Petition, the Administrator of Tamil Nadu State Transport Corporation Employees Pension Fund Trust, has come up with the present Review Applications, seeking to review the common order dated 10.09.2014 passed in W.P.No.12402 of 2010 and W.P.No.8706 of 2010.

3. The Contempt Petitioner viz. N.Jayabalan initially preferred W.P.No.8706 of 2010 seeking a direction to the respondent-Management to fix basic wages on par with similarly placed workmen from the date of reinstatement on 07.09.2004 and also to pay the difference in wages from October 2004 till the date of correct fixation of basic pay. While so, the Management filed W.P.No.12402 of 2010

seeking to quash the Award dated 22.12.2009 made in C.P.No.143 of 2005 on the file of the II Additional Labour

Court, Chennai.

4. Admittedly, the workman, who is the contempt petitioner herein, was dismissed from service and the Management had filed Approval Petition No.187 of 2004, during the pendency of the Industrial Dispute and that the said Approval Petition was withdrawn by the Management. In pursuance thereof, the workman was reinstated on 28.08.2004. Once an Approval Petition is withdrawn, the employee is deemed to be in service and is entitled to all the benefits, as if there is no termination.

5. For better understanding of the case, relevant portion of the order dated 10.09.2014 under review is extracted hereunder:

"14. I completely agree with the contention of the Management that this Court cannot adjudicate the question of fact and fix the wages of the petitioner on par with the other employee. If the Management has accepted that the workman was getting less salary on par with the counter part whose name is referred supra, this Court can grant the relief since there is a decision of the Apex Court in the case of **Hindusthan Corporation Ltd. v. Dolly Das [1999 (4) SCC 450]**, wherein the Hon'ble Supreme Court held that if the facts are not in dispute, Court can grant relief. But, in this case, there is a

disputed question of fact and this Court cannot grant any relief sought for by the workman in W.P.No.8706 of 2010. It is open to the workman to approach the Labour Court seeking the wages on par with his counter part, if so advised and in case an Application is filed, the Labour Court can determine the same and pass an award, as expeditiously as possible.

15. Hence, the Writ Petition filed by the workman is rejected, similarly the Writ Petition filed by the Management is dismissed for the reasons as stated supra and the Management is directed to settle all the terminal benefits including pension based on the last drawn wages, without prejudice to the rights of the parties before the Labour Court in case the employee approaches for fixation of revised wages. At the most, the employee would be entitled to difference in wages/difference in pension. In case, an Application filed by the workman for revised wages is allowed, the dismissal of the Writ Petition filed by the workman now is not a bar for the Management to settle the terminal benefits of the employee based on the last drawn wages. The entire exercise has to be completed by the Labour Court, if employee approaches the Court, within a period of six months from the date of receipt of a copy of this order. No costs. ... "

6. The entire issue revolves based on Pension Rules viz. Tamil Nadu State Transport Corporation Employees' Pension Fund Rules (in short 'Pension Rules') applicable to the Contempt Petitioner herein. Relevant provisions of the said Pension Rules are extracted hereunder:

"Rule 2(p) (iiii) - In respect of all other employees, the date of regular employment or becoming the member of the Employees' Provident Fund in the STU will be reckoned for the calculation of pensionable service.

13. Determination of Eligible Service:
The eligible service shall be determined as follows:

(a) In the case of a "New Entrant" entering into service on or after 01.09.1998, the "actual service" shall be treated as eligible service. The total actual service shall be rounded off to the nearest year. The fraction of service for six months or more shall be treated as one year and the service less than six months shall be ignored.

7. It is also not in dispute that the Contempt petitioner/workman was an employee of the Metropolitan Transport Corporation for a period of 16 years 11 months and 80 days. According to the workman, he has completed 10 years of service after deducting the leave on Loss of Pay, in view of his entry in the Metropolitan

Transport Corporation, more particularly taking note of his membership in the EPF Account.

8. Learned counsel for the petitioner in the Review Applications submitted that the Review Petitioner was not a party to the original Writ Petition and that after deducting the leave on Loss of Pay, the total years of service of the workman in the case on hand would be 9 years and 6 months and rounding off the period to 10 years may not be applicable to the workman, as it would be applicable to those who have joined service after 1998.

9. In reply, learned counsel appearing for the respondent in the Contempt Petition submitted that since the petitioner joined the service of the Metropolitan Transport Corporation prior to 01.09.1998, the fraction of 6 months cannot be treated as one year and the same will be applicable to the new entrants, who have joined service after 01.09.1998.

10. It is seen that the Contempt petitioner/workman joined the services of the Metropolitan Transport Corporation as a Conductor on 22.07.1994 and retired on 30.06.2011. He became a member of the Employees Provident Fund on 22.07.1994 as per the aforesaid rules extracted

is taken into effect from the date of his entry into Provident Fund, the length of his service is over 10 years, after deducting Leave on Loss of Pay of 6 years 4 months and 9 days.

11. The contention of the learned counsel for the Contempt petitioner that the workman has completed over and above 9 years and 6 months of service and it should be rounded off to 10 years cannot be accepted, as the respondent was right in contending that the same would be applicable to those candidates, who have joined the service after 01.09.1998.

12. According to the learned counsel for the respondent in the Contempt Petition, a clarification was issued by the Government vide Letter No.11784/D/2003-2, Transport, dated 08.09.2003 as to the calculation of pensionable service and as to whether daily paid service/consolidated pay service can be construed as pensionable service. The clarification issued by the Government as regards the said issues are extracted hereunder:

(1) The services put in by an employee on daily paid wages or on consolidated wages cannot be construed as pensionable service. Hence the period of such services shall not count for pension

even though PF recovery has been made from the employee during that period.

(2) The services of regular employee from which he becomes member of the Provident Fund shall only be construed as pensionable service.

13. When the above clarification was brought to the attention of this Court, this Court pointed out that any instructions or Circular cannot run counter to the Rules. Learned counsel appearing for the Review petitioner fairly submitted that the said Government letter is held to be bad and a Division Bench of this Court has set aside the said Circular with regard to calculation of pensionable service.

14. On a reading of the Rule with regard to the employees on regular employment or who have become members of the Employees Provident Fund in the State Transport Corporation, this Court is of the view that the date of entry insofar as the Contempt petitioner is concerned will have to be reckoned from the date of his enrolling as a member of the Employees Provident Fund. From the records produced by the respondent-Management and the contempt petitioner, it is clear that the contempt petitioner has actually worked for 10 years and 6 months and 29 days, after deducting Leave on Loss of Pay.

15. This Court, in the common order passed in the Writ Petitions, has categorically observed that the workman has completed required years of service and pension will have to be extended to him. Though it has been pointed out by the contempt petitioner that there is wilful and deliberate disobedience of the order of this Court by the respondent-Management, I agree with the contention of the respondent-Management that the Review Petitioner was not a party to the Writ Petition and even though they have not complied with the order, it cannot be construed as wilful and deliberate disobedience.

16. It is also stated by the learned counsel for the Review petitioner that if any clarification/direction is issued to the Review petitioner, they are willing to abide by such conditions.

17. Taking note of the submissions of both parties and in the light of Rule 13 extracted supra, this Court is of the view that the Contempt petitioner, having completed over and above 10 years of service excluding the Leave on Loss of Pay, would be entitled to pensionary benefits and the respondent-Management is directed to extend pensionary benefits to the contempt petitioner immediately, i.e. the

pension payable from the month of September 2017 shall be extended to the contempt petitioner/workman from October 2017. With regards to arrears of pension, this Court grants two months' time to the respondent-Management to pay the same to the contempt petitioner. It is open to the respondent-Management to adjust any arrears due to them from the employee including the balance amount towards non-implemented punishment.

18. In this connection, it is worth referring to a decision of the Madurai Bench of this Court in **W.P. (MD) Nos.6902 of 2014 and 23615 of 2016**, wherein, while dealing with the issue as regards non-implemented punishment, the Madurai Bench, by an order dated 03.02.2017, has held as under:

"11. The next issue is as to whether having allowed the petitioner to go on VRS, the Management is justified in recovering amount under the head **non-implemented punishment of increment cut from the petitioner**. It is not in dispute that the Service Rules or Standings Orders have not been challenged. The respondents relied on Clause 25 of the Certified Standing Orders applicable to the respondent corporation, which is reproduced hereunder:

"25. Punishment for Misconduct:

"(1) (iv) (b) - Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increment ordered to be withheld, where such an order cannot be given effect to."

12. According to the petitioner, the respondents have already imposed punishment

under Clause 25 (iii) and therefore, they cannot again invoke Clause 25(iv)(b) to recover the amount. Though the argument of the petitioner appears to be sound, when seen in depth, it has no logic, simply because, if a person is imposed with punishment after the domestic enquiry for some misconduct, it is open to him to challenge the same by raising dispute through Union and admittedly, the petitioner has not done so. Where there is an imposition of punishment on an employee, who is going to retire from service shortly, certainly, the Management will have to make recovery, otherwise, the guilty person would escape without any punishment. The punishment mentioned under Clause 25 (iii) and (iv) is interchangeable and the Management will have to first state the punishment as per Clause 25 (iii) and thereafter, for want of recovery period, they have to invoke Clause 25(iv), but in this case, it is Clause 25(1)(iv)(b). In case, an employee dies prior to issuance of order of stoppage of increment, certainly, terminal benefits have to be given to the family members and only the monetary benefits need to be adjusted and paid. The purpose of Standing Orders is to give effect to the clause in the Standing Orders, including the punishment, where charges are proved and not otherwise.

17. In fine, both these Writ Petitions fail and the same are dismissed. The Management is entitled to deduct the amount from the terminal benefits, except from the amounts like gratuity, which are protected by Statute like Payment of Gratuity Act etc. The Management is directed to release the terminal benefits after adjusting the amount imposed towards non-implemented punishment of increment cut **within a period of two months from the date of receipt of a copy of this order** and the gratuity shall be released in **six equal monthly instalments**. Normally, this Court used to direct the Transport Corporation to pay the terminal benefits in twelve equal monthly instalments as a special case, the said period is reduced in this case to six equal monthly instalments in so far as gratuity is

concerned."

19. It is also open to the Review Petitioner to adjust the excess recovery from the pension payable to the contempt petitioner/workman. As there is no wilful and deliberate disobedience of the order of this Court, **the Contempt Petition is dismissed. The Review Applications are allowed to the extent indicated above without costs.** Consequently, connected W.M.P.Nos.25030 and 25032 of 2017 in the above Review Applications are closed.

20. As far as the other observation in the order dated 10.09.2014 under review, with regard to approaching the Labour Court is concerned, the time limit is extended by two months for the contempt petitioner to recourse his remedy.

SD/-

JOINT REGISTRAR(OS) (i/c)

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//Certified to be true copy//

Dated at Madras this the day of 2017.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

To

1. Thiru Balakrishnaswami,
The Managing Director,
Metropolitan Transport Corporation (Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai.

2. The Presiding Officer,
II Additional Labour Court,
Chennai-600 104.

3. The Section Officer,
Writ Section,
High Court, Madras.

one cc to Mr.M.Chidambaram, Advocate, Sr.No.10202/17

one cc to M/s.P.Paramasiva Doss, Advocate, Sr.No.10407/17

one cc to Mr.S.Varadarajulu, Advocate, Sr.No.10200/17



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