



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.12.2017

PRONOUNCED ON : 19.12.2017

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

W.P(MD) No. 5186 of 2014

and

M.P(MD) No. 1 of 2014 &

W.M.P(MD) No. 17941 of 2017

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S.Pandian

... Petitioner

vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Limited, Bye-Pass Road,
Madurai - 16.

2. The General Manager,
Tamil Nadu State Transport Corporation,
Madurai Limited, Dindigul Region,
Dindigul - 04.

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

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to settle the wages of the petitioner calculating current wages for the period from 19.04.2006 to 31.07.2009 after adjusting 17-B wages already paid and to pay the pension benefits for the petitioner's entire period of service from the date of appointment of 14.03.1980 to till the date of Superannuation on 31.07.2009 for the total period of service of 29 years with interest at the rate of 18% per annum in the light of the Labour Court Award in I.D.No.137 of 2002, dated 19.04.2006 and confirmed by the Division Bench of this Court in W.A(MD)No.88 of 2011, dated 09.09.2011.

For Petitioner

: Mr.S.Govindan

For Respondents

: Mr.A.Jeyaram

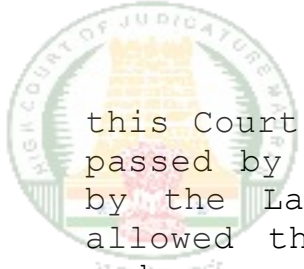
**ORDER**

This Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to settle the wages of the petitioner calculating current wages for the period from 19.04.2006 to 31.07.2009 after adjusting 17-B wages already paid and to pay the pension benefits for the petitioner's entire period of service from the date of appointment of 14.03.1980 to till the date of Superannuation on 31.07.2009 for the total period of service of 29 years with interest at the rate of 18% per annum in the light of the Labour Court Award in I.D.No.137 of 2002, dated 19.04.2006 and confirmed by the Division Bench of this Court in W.A(MD)No.88 of 2011, dated 09.09.2011.

2.In the affidavit filed in support of the petition, it is stated that the petitioner was dismissed from service by the respondent/Transport Corporation on 29.12.2000, on certain allegations regarding collection of ticket fare from the passengers and issuance of tickets to them. The petitioner has raised an Industrial Dispute before the Labour Court, Madurai in I.D.No.137 of 2002, challenging the dismissal order passed by the second respondent and to set aside the dismissal order as illegal and to direct the respondents to reinstate the petitioner in service with continuity of service with backwages and all attendant benefits.

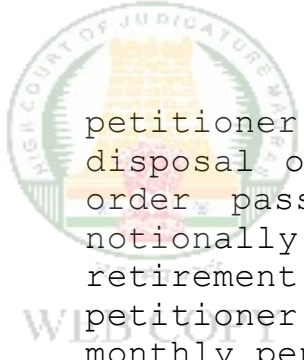
3.The Labour Court, after considering the entire pleadings and materials placed on record, had set aside the dismissal order and directed the Management to reinstate the petitioner into service with continuity of service, but without backwages. Aggrieved by the said order of the Labour Court, the respondent/Transport Corporation filed a Writ Petition in W.P(MD)No.10372 of 2006 before this Court and in the said Writ Petition, the petitioner had also filed a petition in M.P.No.2 of 2006 praying to pay the last drawn wages under Section 17B of the Industrial Disputes Act. This Court also in M.P(MD)No.2 of 2006, directed the respondents to pay the last drawn wages under Section 17B of the Industrial Disputes Act and he was also drawing 17B wages from the date of the award till 31.07.2009 and he retired from service on 31.07.2009 on attaining the age of superannuation.

4.This Court, by an order, dated 23.11.2010, in W.P(MD) No.10372 of 2006, had set aside the award passed by the Labour Court in I.D.No.137 of 2002 and allowed the Writ Petition filed by the respondents. Aggrieved by the said order of the learned Single Judge, the petitioner has filed an appeal in W.A(MD)No.88 of 2011 before this Court with a prayer to set aside the order passed by the Single Judge and restore the award passed by the Labour Court, Madurai in I.D.No.137 of 2002. The Division Bench of



this Court, by an order, dated 09.09.2011, had set aside the order passed by the learned Single Judge and restored the award passed by the Labour Court in I.D.No.137 of 2002, on 19.04.2006 and allowed the Writ Appeal filed by the petitioner. Based on the order passed by the Division Bench of this Court, the petitioner became entitled for all the terminal benefits from the date of appointment, till the date of retirement. Hence, the petitioner has made several representations to the respondents to settle all the terminal benefits. But the respondents settled only Employees Provident Fund, Gratuity in part and started paying monthly pension only from 01.06.2012 onwards and the entire period of service was not taken into account and only paying reduced pension. The respondents also withheld a sum of Rs.930/- per month towards commutation of his pension for a period of 15 years and had not settled the commutation value of pension so far. Since the respondents are paying the reduced pension only from 01.06.2012 instead of from 01.08.2009 ie., the date of retirement, the petitioner is entitled to get arrears of pension for the period from 01.08.2009 to 31.05.2012. The arrears of pension amount was also not paid to the petitioner even after repeated representations sent by him. Further, the petitioner is entitled to get Employees Benefit Relief Fund as per Settlement under Section 12(3) of the Industrial Disputes Act, which is applicable to all the employees and the respondents have not yet settled the above benefits from 01.08.2009 till date, at the rate of Rs.750/- per month and also not paid 7 days wages till date, which works out to Rs.2,500/- and a bonus amount of Rs.6,000/- was also withheld, which is entitled to receive for the period from 01.04.2000 to 31.12.2000. Further, the petitioner was not paid leave salary and is entitled to get encashment of Earned Leave salary of Rs.6,800/- for 31 days and Medical Leave salary of Rs.3,400/- for 15 days which works out to Rs.10,200/- and he is entitled for arrears of commutation of pension of Rs.1,67,000/-, arrears of pension for Rs.1,50,000/-, Employees Benefits Relief Fund for Rs.34,500/-, unpaid wages of Rs.2,500/-, unpaid bonus of Rs.6,000/- and Earned Leave Salary of Rs.6,800/- for 31 days and Medical Leave Salary of Rs.3,400/- for 15 days, in total he is entitled to get a sum of Rs.3,70,600/- along with 18% per annum. Even after filing a Writ Petition in W.P.No.9065 of 2013, the respondents paid only Rs.2,19,870/- and major portion of arrears is yet to be settled. Hence, he has made a detailed representation to the respondents. So far no action has been taken by the respondents, hence the petitioner has filed the present Writ Petition.

5.The first respondent has filed the counter-affidavit, wherein it is stated that as per the direction of this Court, the respondents had paid a sum of Rs.6,693/- as 17-B wages to the petitioner in January 2008 subject to the disposal of the main Writ Petition. The respondent/Transport Corporation stopped 17-B wages to the petitioner, since he retired on 31.07.2009 and the



petitioner already attained the age of superannuation before the disposal of the Writ Petition and the Writ Appeal. Based on the order passed in the Writ Appeal, current backwages has been notionally arrived from the date of his dismissal upto his retirement and settled all the eligible terminal benefits to the petitioner without monetary effect of current wage arrears and the monthly pension is being paid to the petitioner.

6. In paragraph Nos. 9 and 10 of the counter-affidavit, it is stated as follows:-

"9. I humbly submit that in similar case filed before the High Court of Delhi at New Delhi in W.P(C) No. 4069 of 2012 and C.M. No. 8531 of 2012 between Delhi Transport Corporation Vs. Jai Prakash Sharma the Court held that:-

"20. However, the decision of the Labour Court in awarding backwages is not sustainable. The Supreme Court in the case of J.K. Synthetics Limited Vs. K.P. Agarwal: (2007) 2 SCC 433 had made a distinction in cases where an employee has been reinstated on account of his termination being found to be illegal and in cases where an employee is directed to be reinstated by reducing the punishment meted out to the employee. In such cases where the punishment inflicted on an employee is reduced and the employee is reinstated with retrospective effect, ie., from the date of his termination, he would be entitled to continuity of his service and in cases where he is not reinstated with retrospective effect, he would be reinstated in service from the date of the award. The Supreme Court clarified that reinstatement in either event, would not result in the employee being entitled to backwages. The relevant extract of the said decision reads as under:-

"19.... Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc."

<https://hcservices.ecourts.gov.in/hcservices/> I humbly submit that the Honourable High Court of Delhi at New Delhi in the above WP finally passed that:-

"21. Following the aforesaid decision, the impugned



award to the extent that it grants back wages to the respondent, is liable to be set aside.

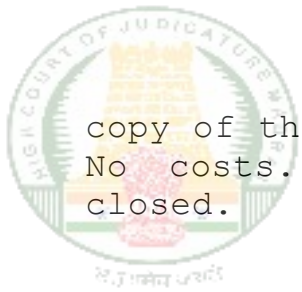
22. In the given circumstances, the present Writ Petition is disposed of by modifying the impugned award to the extent that it directs payment of back wages to the respondent. It is directed that the back wages prior to the award shall not be payable to the respondent. However, it is clarified that the reinstatement awarded by the Labour Court shall be given effect to for the purpose of providing continuity of service to the respondent".

7. In the counter-affidavit, it is further stated that the petitioner's claim of current wages does not apply, as the Labour Court also ordered only reinstatement without back wages.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

9. It is seen from the award of the Labour Court, Madurai that the Labour Court has come to the conclusion that the question of misappropriation has not been proved by the respondent/Management and considering the entire pleadings and materials placed before the Court, the order of dismissal passed by the respondent/Management, dated 29.12.2000 was set aside and the respondents are directed to reinstate the petitioner from service with continuity of service without back wages. Challenging the award, the Management filed W.P(MD)No.10372 of 2006 and it was allowed. As against the same, the petitioner filed W.A(MD)No.88 of 2011 and the Division Bench of this Court set aside the order of the learned Single Judge, wherein, it has been held that the award passed by the Labour Court, Madurai is restored. As per the Division Bench order of this Court, the respondents are directed to reinstate the petitioner, calculate his wages afresh and to pass orders after deducting the amount already paid to the petitioner under Section 17-B of the Industrial Disputes Act. The order passed by the Division Bench of this Court in W.A(MD)No.88 of 2011 has become final and binding on the Management. Therefore, the respondents are directed to comply with the directions issued by the Division Bench of this Court while allowing the Writ Appeal filed by the petitioner herein. The Writ Appeal filed by the petitioner was allowed by this Court, hence, the petitioner is entitled to get all the consequential benefits and other monetary benefits, which he is entitled to. Since the respondents did not comply with the Judgment passed in the Writ Appeal, the present Writ Petition is filed by the petitioner.

10. In the light of the Judgment passed by the Division Bench of this Court in W.A(MD)No.88 of 2011, the respondents are directed to pay all the monetary benefits, terminal benefits, arrears of pension if any to the petitioner, which he is entitled to, within a period of eight weeks from the date of receipt of a



copy of this order and accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(W)

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Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Transport Corporation,
Madurai Limited, Bye-Pass Road,
Madurai - 16.
2. The General Manager,
Tamil Nadu State Transport Corporation,
Madurai Limited, Dindigul Region,
Dindigul - 04.
3. The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai - 600 002.

+1cc to Mr.S.Govindan, Advocate Sr.No.92345

PS

VB/KK/SAR4/10/01/2018/6P/5C

**Order made in
W.P(MD)No.5186 of 2014
19.12.2017**