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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.04.2017

Pronounced on : 02.06.2017

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD) No.428 of 2016

and

W.M.P.(MD) Nos.348 and 349 of 2016

G.Alagarsamy

...Petitioner

Vs.

1.The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Rep. By its Managing Director,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Karaikudi Region,
Karaikudi.

3.The Administrator,
Tamil Nadu State Transport Corporation Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai - 2.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the second respondent in Ref. No.Th.Aa.Po.Ka/Sattam/Sa.1/758, dated 23.10.2015, quash the same and consequently direct the respondents to pay monthly pension, gratuity, earned leave encashment benefits, refund of contribution made towards, Institute of Road Transport and all other attendant benefits together with interest at the rate of 18% per annum payable from the date of the petitioner's retirement to the date of actual payment to him.

For Petitioner : Mr.C.K.Chandrasekar

For Respondents : Mr.D.Sivaraman

1 and 2

For Respondent 3 : Mr.A.P.Muthupandian

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the second respondent dated 23.10.2015 and consequently to direct the respondents to pay the monthly pension, gratuity, earned leave encashment benefits, etc., with interest at the rate of 18% per

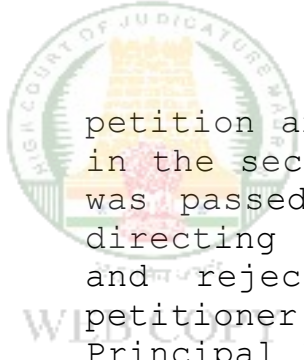
annum, payable from the date of petitioner's retirement.

2. Heard Mr.C.K.Chandrasekar, learned counsel appearing for the petitioner, Mr.D.Sivaraman, learned counsel appearing for the respondents 1 and 2 and Mr.A.P.Muthupandian, learned counsel appearing for the third respondent.

3.The following facts are not in dispute. The petitioner was originally appointed as a Driver (Trainee) in the erstwhile Pandian Roadways Corporation Limited on 21.01.1981 on daily wages. The petitioner was made as regular employee on probation with effect from 01.04.1982. After the bifurcation of the Pandian Roadways Corporation Limited, a new corporation by name, Marudhupandiar Transport Corporation Limited was formed having its headquarters at Karaikudi. The petitioner was made as an employee of Marudhupandiar Transport Corporation Limited with effect from 01.04.1983. The petitioner was terminated from service on 31.05.1983. At the time of petitioner's termination, a dispute with regard to the bonus was pending in I.D. No.62 of 1982 on the file of the Industrial Tribunal, Madras. The order of termination, according to the petitioner, was passed without sanction of law as contemplated under Section 33(2)(b) of Industrial Disputes Act. The petitioner made a complaint before the Industrial Tribunal, Chennai and the same was taken on file in Complaint No.77 of 1983 in I.D.No.62 of 1982.

4.The Industrial Tribunal, after an elaborate enquiry, declared that the termination of petitioner is illegal by an order dated 31.12.1984. After the order of the Industrial Tribunal, dated 31.12.1984, the petitioner made a representation to the management for reinstatement and for consequential benefits. However, the first respondent corporation filed a Writ Petition in W.P.No.4695 of 1985 before the Principal Bench of this Court challenging the order passed by the Tribunal in Complaint No.77 of 1983. The said Writ Petition was ultimately dismissed on 08.09.1994. Even thereafter, the petitioner sought for reinstatement by a representation dated 21.10.1994. However, even this time, the first respondent management did not reinstate the petitioner. On the other hand, the first respondent management filed an application in W.P.M.P.No.3967 of 1998 in W.P.No.4695 of 1985 as if the writ petition was dismissed for default. Even this application was filed after a lapse of four years. Ultimately, the said application was also dismissed on 02.09.1998 by this Court.

5.Though the order passed by the Industrial Tribunal, Chennai, in Complaint No.77 of 1983, dated 31.12.1984, became final, the petitioner was not reinstated nor paid wages. Hence, the petitioner filed two claim petitions before the Labour Court, Madurai, in C.P.No.29 of 1995 and C.P.No.185 of 1998 claiming wages for the period from 01.06.1983 to 31.12.1994 in the first



petition and wages for the period from 01.01.1995 to August, 1998 in the second petition. It is also admitted that a common order was passed in both the petitions by the Labour Court, Madurai, directing the payment of Rs.25,000/- and Rs.10,000/- respectively and rejecting the petitioner's claim of full wages. The petitioner thereafter filed two writ petitions before the Principal Bench of this Court in W.P.Nos.2048 and 2055 of 2002. Though the two writ petitions were dismissed on 25.04.2014 by common order, the petitioner states that appeals have been preferred by the petitioner. In the meantime, the second respondent by an order dated 26.02.2002, reinstated the petitioner in service with effect from 01.06.1985 with continuity of service. The petitioner also was permitted to join duty, on 05.03.2002. After reinstatement of the petitioner and continuous service for about eight years, the petitioner attained the age of superannuation on 31.05.2010 and retired from service. It was thereafter, the petitioner has made several representations to the respondents requesting them to pay monthly pension, gratuity and other service benefits to the petitioner. In all the representations, the petitioner requested the respondents, to pay pension by treating the period from 01.04.1982 to 31.05.2010 as a period in service. However, the second respondent passed the impugned order dated 23.10.2015, stating that the petitioner's claim for payment of pension and other retiral benefits will be considered only after the disposal of the Writ Appeals stated to have been filed by the petitioner. The petitioner also states in the affidavit filed in support of the Writ Petition that the second respondent has denied pension to the petitioner orally when he met him in person on the ground that the petitioner was out of employment from 01.06.1983 to 05.03.2002 and that therefore, he has put in only eight years of service from 05.03.2002 to 31.05.2010. It is in the above circumstances, the present Writ Petition has been filed.

6.The learned counsel for the petitioner submitted that the Industrial Tribunal has passed an elaborate order on 31.12.1984 holding that the order of termination dated 31.05.1983 is illegal and invalid and hence, the petitioner is entitled to continuity of service to get all the retirement benefits by treating the period from 01.04.1982 to 31.05.2010 as a period on duty. The learned counsel for the petitioner further relied upon Rule 16 of the Tamil Nadu State Transport Corporation Pension Fund Rules which stipulates that a person who has rendered qualifying service of ten years or more is entitled to superannuation pension on attaining the age of superannuation.

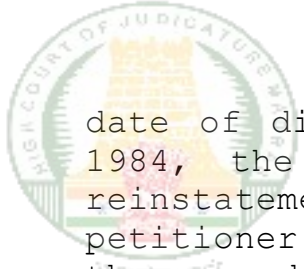
7.Sum and substance, the learned counsel for the petitioner submitted that by virtue of the order passed by the Industrial Tribunal in Complaint No.77 of 1983, dated 31.12.1984, the petitioner is deemed to be in employment for the whole period from 01.04.1982 to 31.05.2010.



8. The second respondent has filed a counter affidavit *inter alia* contending that the petitioner though was reinstated in service with continuity of service, was denied back wages and that therefore, he has rendered pensionable service only for eight years. The second respondent has admitted, of course, the position that the petitioner was reinstated in service with continuity of service but without back wages. In the counter affidavit, it was further stated that the pensionable service of the member in service has to be determined with reference to the contributions received or receivable on his behalf in the Employees' Pension Fund. It is also stated that if a member has not rendered an eligible service of ten years on the date of retirement, he is only entitled to service gratuity benefits. Except admitting a sum of Rs.1,40,000/- towards gratuity, service gratuity, and leave salary etc., the second respondent has denied the right of the petitioner claiming any other amount payable towards pension or other heads payable to every employee of transport corporation who retire from service after rendering service for more than 10 years.

9. Having regard to the contentions put forth by the petitioner and the stand taken by the respondents in the counter affidavit, the main issue that arise for consideration in this case is whether the petitioner is entitled to all other service benefits he claims by treating the whole period from 01.04.1982 to 31.05.2010 as a period of qualifying service for the purpose of granting relief as prayed for in the present Writ Petition.

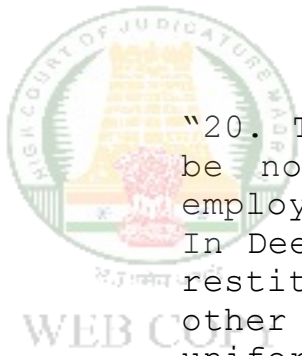
10. It is not in dispute that the petitioner was terminated from service without even issuing a show cause notice and without following the mandatory procedures contemplated under Section 33 (2) (b) of the Industrial Disputes Act. From the reading of the order passed by the Industrial Tribunal, Chennai, in Complaint No.77 of 1983, it is clear that the Tribunal has categorically found that the order of termination dated 31.05.1983, is illegal being in contravention of the Standing Orders and the same cannot be supported even in terms of the contract of service. It is further held that the order of termination also is in violation of Section 33 (2) (b) of the Industrial Disputes Act. The order of the Tribunal though was challenged before this Court in Writ Petition filed in the year 1985, this Court has confirmed the order of Tribunal by dismissing the Writ Petition on merits by order dated 08.09.1994. Despite the fact that the petitioner was directed to be reinstated in service by order passed in the year 1984, the second respondent failed to comply with the direction. Even after the dismissal of the Writ Petition in the year 1994, the second respondent filed a restoration petition, as if the Writ Petition was dismissed for ~~some technical reasons~~, the Writ Petition was dismissed after recording a finding that the petitioner has got no case on merits. Even the petition for restoration was after a lapse of four years from the



date of dismissal of the Writ Petition. Right from the year 1984, the petitioner has made several representations seeking reinstatement. However, his request was considered and the petitioner was reinstated only in the year 2002. The conduct of the second respondent which was in utter disregard to the order of the Industrial Tribunal which was later upheld by this Court is now being taken advantage of by the respondents to deny retirement benefits which the petitioner is entitled to if he had been reinstated in service in 1984 pursuant to the order of Industrial Tribunal, Chennai, in Complaint No.77 of 1983.

11.The petitioner later filed a claim petition before the Industrial Tribunal claiming back wages. Though the petitioner's claim for back wages was negatived by the Tribunal and the Writ Petitions filed by the petitioner were also dismissed, it is submitted that appeals are pending.

12.Be that as it may. The fact that the petitioner was reinstated in service with continuity of service is not in dispute. The learned counsel for the petitioner relied upon a judgement of a Division Bench of Delhi High Court in the case of **Mahabir Prasad v. Delhi Transport Corporation** reported in **2014-IV-LLJ-413 (Del)**. The facts in the judgement relied upon by the learned counsel for the petitioner are identical. The petitioner therein was removed from service by an order dated 19.01.1995 on allegations of misconduct. He raised an Industrial Dispute and the Labour Court by its award dated 02.08.2010 set aside the order of removal and directed to reinstate the petitioner with continuity of service but without back wages. The petitioner therein was reinstated in service without back wages by order dated 12.05.2011. However, in the order itself, the Transport Corporation, denied the petitioner therein the benefits of notional pay fixation, promotion, ACP, and increments, etc. It was also stated by the Transport Corporation in the order itself that the services of the petitioner therein were not to be counted for the purpose of pension and terminal benefits (for the intervening period). The pay of the petitioner therein also was fixed in terms of the Last Pay Drawn when he was terminated. After joining the services, the petitioner therein approached the Administrative Tribunal challenging the order. The Tribunal after observing that the stand taken by the transport corporation, denying pensionary benefits for the intervening period is unacceptable, dismissed the application on the technical ground that the petitioner therein namely the applicant before the Tribunal should approach the Industrial Tribunal by invoking the provision of Section 29 of the Industrial Disputes Act, 1947. This order of the Administrative Tribunal was challenged before the Delhi High Court and the Division Bench of the Delhi High Court after analysing the legal position in detail has held as follows:



"20. The above discussion reveals that there appeared to be no standard pattern of directing how a reinstated employee is to be given the benefit after reinstatement. In Deepali Gundu Surwase (supra), for the first time, the restitutionary principle underlying reinstatement and other benefits was spelt out and a semblance of uniformity was attempted. If that is to be kept in mind, what is apparent in this case is that the petitioner had to battle for over a decade and a half to secure justice. The Labour Court held the enquiry against him illegal; went into the material and found that the charge of misconduct was W.P.(C) 2216/2014 Page 14 baseless. It consequently directed reinstatement without backwages. Whilst the denial of backwages is not in question, the Award directed continuity of service. If DTC's contention were to be accepted, the petitioner would stand doubly penalized for the delay in securing justice, plainly for no fault of his. The denial of 15 years' salary would result in his denial of pension, or at least a vastly diminished pension, gratuity and other terminal benefits. If these benefits are denied, the direction to grant continuity of service would be a hollow relief. Furthermore, to restore him in the pay scale at the stage of his termination would be to freeze him in a pay scale that is no longer existent, or at least unrecognizable. It is pertinent that a withholding of 2 increments for two years, with cumulative effect has been held to be a major penalty (imposable only after an enquiry) since the increments "would not be counted in his time-scale of pay" in perpetuity. In other words, the clock would be set back in terms of his earning a higher scale of pay, by two scales. See Kulwant Singh v. State of Punjab, 1991 Supp (1) SCC 504. Keeping this in mind, if the petitioner were to be restored in the pay scale at the stage of his termination, it would amount to withholding several increments, and thus be equivalent to imposing a compounded major penalty.

21. Consequently, it is held that the direction to grant continuity meant that the petitioner had to be given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. Since there is no direction to give consequential benefits, the petitioner cannot claim promotion as a matter of right; it would have W.P.(C) 2216/2014 Page 15 to be in accordance with the rules. ACP benefits however, should be given. The notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for pension, gratuity, and contributions to



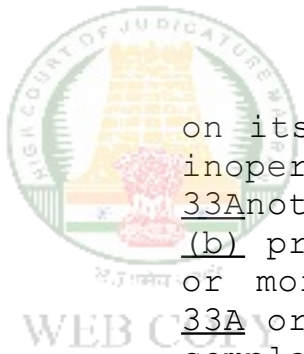
provident fund etc. This Court directs the DTC to issue an order extending these benefits to the petitioner for the 15 year period between his dismissal in 1995 and his eventual reinstatement in 2011, within eight weeks from today. The writ petition is allowed in these terms; there shall be no order as to costs."

13.The learned counsel for the petitioner further relied upon a judgment of the Hon'ble Supreme Court in the case of **Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., v. Ram Gopal Sharma and others** reported in (2002) 2 SCC 244. The facts of the case before the Hon'ble Supreme Court also is somewhat similar and the question that arise for consideration before the Hon'ble Supreme Court was formulated by the Hon'ble Supreme Court in paragraph 1 of the said judgment which reads as under:

"If the approval is not granted under Section 33 (2) (b) of the Industrial Disputes Act, 1947, whether the order of dismissal becomes ineffective from the date it was passed or from the date of non-approval of the order of dismissal and whether failure to make application under Section 33(2) (b) would not render the order of dismissal inoperative?

14.The question framed by the Hon'ble Supreme Court, of course, only relates to the first part of the present case. The Constitution Bench of the Hon'ble Supreme Court considered the issue with reference to several judgments and after overruling the contrary view expressed in some of the earlier judgments and held as follows:

"15.The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2) (b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2) (b). An employer who does not make an application under Section 33(2) (b) or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the matter of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it,



on its merits, to take a position that such order is not inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33(2)(b) proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31(1). Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment."

15. Thus, the legal implication of an order of termination during the pendency of an Industrial Dispute in contravention to Section 33(2)(b) of the Industrial Disputes Act, 1947, has been explained in the above judgment and the Hon'ble Supreme Court has categorically held that the employee is entitled to be reinstated in service. Having regard to the categorical pronouncements of the Hon'ble Supreme Court and the view expressed by the Division Bench of Delhi High Court, this Court has no hesitation to hold that the petitioner is entitled to succeed in the present Writ Petition.

16. As a result, this Writ Petition is allowed and the impugned order passed by the second respondent in Ref. No. Tha.Aa.Po.Ka/Sattam/Sa.1/758, dated 23.10.2015, is quashed. Consequently, the respondents are directed to pay monthly pension, gratuity, earned leave encashment benefits and all other benefits by treating the petitioner as a regular employee having rendered pensionable service from 01.04.1982 to 31.05.2010 and disburse the gratuity, earned leave encashment, etc. Though the petitioner is entitled to interest at the rate of 18% per annum from the transport corporation, considering the financial constraints on account heavy loss, this Court direct payment of 6% interest per annum payable from the date of retirement of the petitioner till the actual payment is made to the petitioner. No costs. Consequently, the connected W.M.P.(MD) Nos.348 and 349 of 2016 are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar



To

1.The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Kumbakonam.

WEB COPY

2.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Karaikudi Region,
Karaikudi.

3.The Administrator,
Tamil Nadu State Transport Corporation Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai - 2.

+1cc to M/s.A.RAHUL Advocate in SR. No.58411

+1cc to Mr.D.SIVARAMAN Advocate in SR. No.58160

SRM

JS/KP/SAR.3/12.6.2017/9P-6C

Order made in
W.P. (MD) .No.428 of 2016
02.06.2017