



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2017

Coram:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No.5132 of 2013

K.Pushkaran Nair

.. Petitioner

-Vs-

1.The Principal Secretary,
Government of Tamil Nadu,
Department of Transport,
St. George Fort,
Chennai.

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Ltd.,)
Madurai.

3.The Presiding Officer,
Labour Court,
Tirunelveli.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to impugned order passed by the 3rd respondent in Claim Petition C.P.No.27 of 2007 dated 27.07.2012 and quash the same as arbitrary, illegal and against equity and consequently direct the respondents No.1 and 2 to pay a sum of Rs.19,78,958.84/- (Rupees Nineteen Lakhs Seventy Eight Thousand Nine Hundred Fifty Eight and Paise Eighty Four) to the petitioner as back wages, attended benefits, etc., following reinstatement of the petitioner to service together with interest within stipulated time.

For Petitioner : Mr.P.Krishnasamy
For Respondents : Mr.K.Guru (for R1)
Additional Government Pleader

Mr.K.Sathiya Singh (for R2)

R3 - Labour Court



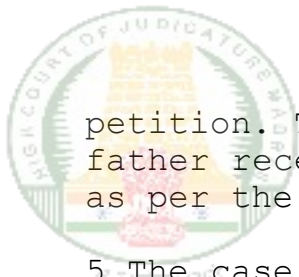
ORDER

The instant Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records pertaining to impugned order passed by the 3rd respondent in Claim Petition in C.P.No:27 of 2007 dated 27.07.2012 and to quash the same as arbitrary, illegal and against equity and consequently direct the respondents No:1 & 2 to pay a sum of Rs.19,78,958.84/- (Rupees Nineteen Lakhs Seventy Eight Thousand Nine Hundred Fifty Eight Four) to the petitioner as back wages, attended benefits, etc., following reinstatement of the petitioner to service together with interest within stipulated time.

2.The case of the petitioner is that the petitioner is the son of R.Kumaran Pillai. The petitioner's father R.Kumaran Pillai worked as driver in Tamil Nadu State Transport Corporation bearing staff No.1222 under the control of the respondents herein. The petitioner's father committed fatal accident and for the same an enquiry was conducted and ultimately he was dismissed from service with effect from 07.09.1981.

3.The petitioner's father has filed I.D.No. 158 of 1982 before the Labour Court, Madurai by challenging the order of dismissal. The Labour Court was pleased to allow the Industrial Dispute by order dated 22.12.1983 by directing the respondents to reinstate the petitioner's father into service with half pay of back wages with attended monetary benefits. As against the reinstatement, the respondent Transport Corporation filed writ petition before this Court in W.P.No.5922 of 1984 and the same was dismissed by confirming the order passed by Labour Court, Madurai by order dated 20.11.1992.

4.Therefore the respondents Transport Corporation by proceeding dated 19.07.1993 ordered to implement the order of the Labour Court, Madurai. In the mean time, the petitioner's father attained the age of superannuation in the month of September 1986. The petitioner's father executed a Will dated 23.09.1989 in favour of the petitioner with respect of his terminal benefits and half pay of back wages, if the said amounts are not paid during his life time and the petitioner is entitled to receive the same. The petitioner's father died 25.12.1993. Since the respondents failed to pay half of back wages and other terminal benefits, the petitioner filed Claim Petition No:27 of 2007 under Section 33 (c) (ii) of the Industrial Disputes Act seeking to direct the respondents to deposit a sum of Rs.19,78,598.84 with interest and cost. Originally an ex-parte order was passed in the said claim petition and thereafter the respondents filed the application to set aside the ex-parte order and the same was allowed. Thereafter the Labour Court, Tirunelveli passed final order on 9.6.09 on merits by dismissing the claim petition on the main ground that during the lifetime of the petitioner's father, he received the back wages and other monetary benefits. Being aggrieved over the same, the petitioner has come forward with the present writ



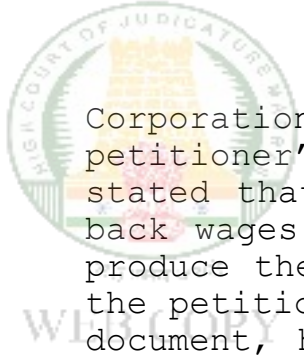
petition. The petitioner herein argued that at no point of time, his father received half pay of back wages and other retirement benefits as per the order of the Labour Court, Madurai.

5. The case of the respondent Transport Corporation is that the claim petition filed by the petitioner after the period of 14 years from the date of dismissal order of writ petition is barred by limitation. That apart during the lifetime of the petitioner's father R. Kumara Pillai, he was paid with the half pay of back wages of Rs. 7,380.35 by way of cheque dated 09.10.1993 by calculating the last drawn salary of the petitioner's father at rate of Rs. 459.90. Further the petitioner's father was also paid a sum of Rs. 2,122.60 by cheque dated 10.12.1993. In that regard the petitioner's father gave a letter to the respondent Transport Corporation under Ex-R4. The petitioner's father is not entitled for other claim amount of Rs. 36,000/- towards family welfare fund and Rs. 17,500/- towards subscription paid to the Engineering and Medical college. When the petitioner's claim is based on the Will dated 23.09.1989, his father died in the year 1993 absolutely there is no reason assigned by the petitioner to file the claim petition after a lapse of 14 years. Therefore the respondents Transport Corporation prayed to dismiss the writ petition.

6. I heard Mr. P. Krishnasamy, learned counsel appearing for the petitioner and Mr. K. Guru, learned Additional Government Pleader, appearing for the 1st respondent and Mr. K. Sathiya Singh, learned counsel appearing for the 2nd respondent and carefully perused the records.

7. In this case, according to the petitioner, his father's last drawn salary in the year 1981 was at Rs. 4,571/-. Whereas the respondent Transport Corporation stated that the petitioner's father received the monthly salary of Rs. 459.90 at the time of dismissal from service. In order to prove the last drawn salary of the petitioner's father, neither the petitioner nor the respondent Transport Corporation produced any document. When the respondent Transport Corporation disputes the petitioner's father's salary was at Rs. 459.90, the burden of proof is heavily on the respondent's Transport Corporation and it is their duty to produce the salary bill of the petitioner's father R. Kumara Pillai, since the petitioner's father was also died and hence, the respondent's duty to produce the same.

8. Further regarding the alleged payment of receipt of half pay of back wages from September 1981 to September 1986, the respondent Transport Corporation produced a letter said to have executed by the father of the petitioner on 01.11.1993. A perusal of the said letter discloses that the petitioner's father had written a letter in a letter head of the Nesamoni Transport Corporation Limited, Nagercoil wherein it was written that one month back the petitioner's father received half pay of Rs. 7339.35. The petitioner's father further stated in the said letter that he was not paid the Gratuity amount. The said letter will not help the case of the respondent Transport



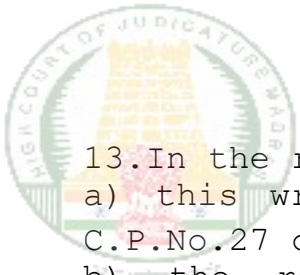
Corporation in payment of half pay of arrears of salary to the petitioner's father, since the said letter has not specifically stated that the said amount is for the full payment of arrears of back wages. The respondent Transport Corporation has not chosen to produce the document to show that the above said amount was paid to the petitioner's father by way of cheque. In the absence of any such document, his court has no other option, except to accept the case of the petitioner.

9. Apart from this, it is the allegation of the respondent Corporation is that, this petitioner's father deceased Kumarapillai alleged to be executed a letter, he received the entire backwages. The letter is enclosed in the respondent's typed set in page No.23, which shows it is the letter pad of the respondent Transport Corporation. In the said letter, it is stated in the column of From, the name of Kumarapillai and his address was stated with the "To" address to the Managing Director of the Transport Corporation, when the letter has been given by the petitioner's father, how he used the letter pad belongs to the Transport Corporation, on fair reading of the said letter, the Tamil version was written in different pen and the signature of the said Kumarapillai is also differed. Therefore, it is made clear the respondent Transport Corporation has manipulated the document for the purpose of this case.

10. That apart, even assuming that the last drawn salary of the petitioner's father was at Rs.459.90, if the said amount is calculated for sixty months, it comes to Rs.27,600/- and if the said amount is divided into two, the half of the amount comes to Rs.13,800/-. Therefore the half pay of arrears of salary to the petitioner's father was, even as per the case of the respondent Transport Corporation would come to Rs.13,800/- and not Rs.7,380.35. Viewing from any angle, the order passed by the Labour Court, Tirunelveli in Claim Petition No.27 of 2007 is on presumption and assumption and the same is liable to be set aside.

11. The respondent's Transport Corporation will have to implement the order of the court in a letter and spirit. In the present case on hand the respondent's Transport Corporation has unnecessarily dragged the matter without paying the back wages and other monetary attended benefits to its employee by filing writ petition. The authorities should have considered the case of the lower grade Employees in a sympathetic manner and also by considering their family circumstances. In this case, the petitioner's father was dismissed from service in the year 1981 and he was in the legal battle nearly for the period of 12 years and ultimately he died in the year 1993 without enjoying the fruits of the order that he is legally entitled.

12. For the foregoing discussions made above, I am of the considered view that the order of the Labour Court, Tirunelveli made in C.P.No.27 of 2007 dated 09.06.2009 is liable to be set aside and accordingly I hereby set aside the same.



13. In the result:

- a) this writ petition is allowed, by setting aside the order in C.P.No.27 of 2007, dated 27.07.2012 passed by the 3rd respondent;
- b) the respondent is hereby directed to pay the amount of Rs.19,78,958.84/- as back wages and attended benefits to the petitioner within a period of eight weeks from the date of receipt of copy of this order with 6% interest. No costs.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal Secretary,
Government of Tamil Nadu,
Department of Transport,
St. George Fort, Chennai.
2. The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai Ltd.), Madurai.
3. The Presiding Officer,
Labour Court, Tirunelveli.

+1 CC TO MR.P.KRISHNASAMY ,ADVOCATE, SR NO.6074

vsa/skn

MAS/SV-MMS/SAR3:10.04.2017:5P-5C

order made in
W.P. (MD) No.5132 of 2013
03.02.2017