

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.Nos.7108 of 2003 & 21827 of 2005

W.P.M.P.No. 23778 of 2005 and

W.V.M.P.No.2331 of 2005

W.P.No.7108 of 2003

P.Manoharan

...Petitioner

Vs

Tamilnadu State Transport
Corporation (Coimbatore Division-II) Ltd.,
rep. By its General Manager,
Chennaiimalai Road,
Erode-638 002.

...Respondent

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to pay the petitioner current wages on par with the petitioner colleagues and not lesser than the wages of the petitioner juniors, Award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.T.Chandrasekaran

W.P.No.21827 of 2005

The Management
Tamilnadu State Transport Corporation
(Coimbatore) Ltd., Coimbatore-43,
(Formerly known as)
Coimbatore Division-II,
rep. By its Managing Director,
Chennimalai Road,
Erode-638 001.

...Petitioner

Vs

1. P.Manokaran
2. The Presiding Officer
Labour Court, Salem.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the second respondent in CP.No.620 of 2002 dated 25.08.2004 and quash the same.

For Petitioner : Mr.T.Chandrasekaran
For Respondents : Mr.V.Ajoy Khose for R1

COMMON ORDER

The petitioner in W.P.No.7108 of 2003 was working as Junior Engineer (Technician) of the respondent Transport Corporation. While so, against the petitioner, disciplinary proceedings were initiated, ultimately, he was removed from service on 12.11.1991. As against the said removal, the petitioner/employee raised an industrial dispute in ID.No.166/1993 and in the said ID, an award was passed by the Labour Court, Salem on 30.05.1995, wherein the order of removal passed by the management was set aside and the employee was directed to be reinstated with continuity of service. However, the Labour Court refused to give the back wages to the employee. Aggrieved over the said award passed by the Labour Court, dated 30.05.1995 directing the reinstatement, the management filed a writ petition in W.P.No.15287 of 1995. At the same time, the employee for the deprivation of back wages, as per the award of Labour Court, challenged the said portion of the order of the Labour Court, dated 30.05.1995, filed writ petition in W.P.No.1049 of 1996.

2. Both the writ petitions were heard together and were disposed of by the learned Judge of this Court in a common order dated 14.03.2002. In the said order, the learned Judge, after having considered the merits of the case, was pleased to dismiss the writ petition filed by the management and allowed the writ petition filed by the employee. The operative portion of the order of the learned Judge of this Court, dated 14.03.2002, is extracted here under for easy reference:-

"10. When once the Labour Court came to the conclusion that the charges against the second respondent has not been proved, it ought to have set aside the order of dismissal and also ordered reinstatement with backwages. The reasons adduced by the Labour Court to decline the backwages are not at all relevant. Hence, the writ petition in W.P.No.1049 of 1996 is allowed and the petitioner therein is entitled to backwages for the date of dismissal.

11. Accordingly, W.P.No.15287 of 1995 is dismissed and W.P.No.1049 of 1996 is allowed. No costs."

3. Since, no appeal has been filed against the order of the learned Judge as referred above, by the management, the said order of the learned Judge dated 14.03.2002, has become final. Pursuant to the said order passed by this Court, the employee was reinstated on 29.11.2002, by the management. However the grievance of the employee was that, though he had been reinstated, he had not been placed in the proper pay scale by taking into account his continuity of service and he had been placed only in the last drawn pay scale, which he received before he was removed from the service in the year 1991. Therefore, in order to fix the correct pay by way of computation and to pay the same to the employee, he had filed a Computation petition in C.P.No.620 of 2002 before the labour Court, Salem.

4. On consideration, the Labour Court allowed the said computation petition and accordingly calculated the pay arrears payable to the employee at Rs.7,08,692.37. The said order was passed by the Labour Court, Salem in the C.P.No.620 of 2002 on 25.08.2004. Challenging the said order made by the Labour Court, Salem in C.P.No.620 of 2002, the management has filed the writ petition in W.P.No.21827 of 2005 with the above said prayer. However, in the mean while, the employee has filed the writ petition in W.P.No.7108 of 2003, seeking for a Mandamus to fix the correct wage and pay the same to the employee and that is how, both the writ petitions came to be filed and have been pending for consideration for all these years before this court.

5. It is submitted by the learned counsel appearing on both sides that, during the pendency of these writ petitions, in pursuance to the interim order dated 05.07.2005, passed by this Court, a sum of Rs.4,32,558/- was deposited by the management before the Labour Court, Salem by way of reinvestment scheme and the said amount is still lying with the Labour Court, of course with accrued interest.

6. When the case came up for hearing sometime before this Court, the learned Judge after hearing the learned counsel on both sides has referred the matter to the Mediation and Conciliation Centre, Chennai to resolve the issue amicably, as the issue raised in both writ petitions are only related to the computation of the back wages and to pay the same to the employee. In spite of the said reference having been made, no settlement has been reached between the parties before the Mediation Centre. Therefore, with the failure report, the matter has been returned back to this Court.

7. I have heard Mr. V.Ajoy Khose, learned counsel appearing for the petitioner/employee, who would fairly submit that though the Labour Court, Salem has made the computation of Rs.7,32,382.37 and the same should be paid to the employee, of course with the subsequent interest at least at the rate of 6% per annum, the employee would confine and satisfy, if at least he is permitted to withdraw the amount of Rs.4,32,558/- deposited by the management, of course, pursuant to the interim order passed by this Court, with accrued interest, without claiming any more, as a full settlement. In alternative, the learned counsel appearing for the petitioner/employee would further submit that as per the computation made by the Labour Court a sum of Rs.7,08,692.37 had been computed as arrears of back wages and even the said arrears of back wages with 6% interest from the date of due till the date of payment, if is directed to be paid to the employee, even in that case, the petitioner/employee would be satisfied.

8. Per contra, Mr.T.Chandrasekaran, learned Standing Counsel appearing for the respondent Transport Corporation and the petitioner in W.P.No.21827 of 2005 submitted that, insofar as the back wages are concerned, even though it was allowed by this Court in the earlier round of litigation by the order dated 14.03.2002, the Labour Court ought not to have calculated the same according to the calculation projected by the employee. Assuming that, the back wages calculated by the Labour Court is correct, it ought not have been ordered with any interest. It is an admitted fact that, for the period between 1991 to 2002, the employee did not work for the respondent Corporation and therefore the theory of "No work, No pay" alone can be adopted. However, the Labour Court has gone to the extent of allowing the back wages with interest.

9. The learned Standing Counsel would further submit that, since the employee admittedly had not worked during the said period, he would not entitle to claim any amount under the various heads like bonus, gratuity, incentive, pongal bonus, earn leave encashment and national festival leave encashment. These are all the facilities normally extended to the working employee and insofar as the present employee is concerned admittedly he had not been in service between the period of 1991 and 2002. Therefore, the computation made by the Labour Court with all these heads is totally unjustifiable. Therefore, the impugned order in C.P.No.620 of 2002 dated 25.08.2004 has to be interfered with.

10. I have considered the rival submissions made by the both sides and also perused the materials placed before this Court.

11. Whether the petitioner/employee is entitled to get backwages is no more res integra in this case, as the same has been concluded by the decision of the learned Judge of this Court made in W.P.No.15287 of 1995 and W.P.No.1049 of 1996 dated 14.03.2002. Since the said order has become final, the employee is entitled to get reinstatement with continuity of service and also back wages. Once such entitlement is confirmed by the order of this Court, the employee can very well claim the same. Since the back wages have not been calculated and paid to the employee he had approached the Labour Court for computation and with the result in C.P.No.620 of 2002, the computation has been ordered by the Labour Court by the impugned order dated 25.08.2004.

12. On perusal of the said computation of the Labour Court, I find that, even under the heads of back wages a sum of Rs.5,27,627.37 has been computed and it is not in dispute. The only objection raised by the respondent Corporation is that, the employee is not entitled to claim bonus, pongal bonus, earn leave encashment, national festival leave encashment alone. Assuming that the employee is not entitled for these facilities, since he has not worked during that period, the employee would get entire back wages as calculated by the Labour Court to the tune of Rs.5,27,627.37. Normally, when the back wages are ordered, the employee would be entitled to get normal interest at the rate of 6% per annum.

13. In this context, it is fairly submitted by the employee through his counsel that, during the pendency of these writ petitions, a sum of Rs.4,32,558/- was deposited in the Labour Court in the reinvestment scheme. Therefore with the accrued interest the deposit is still lying with the Labour Court and the employee is not permitted to withdraw the same. If the employee is permitted to withdraw the said amount with accrued interest till date, he will be confined with the said payment by giving all other claims which has been computed by the Labour Court by its order dated 25.08.2004.

14. This Court is of the considered view that, the said submission made by the learned counsel appearing for the employee is very much justifiable and acceptable. Otherwise assuming that if the employee is not entitled for any other facilities like bonus, leave encashment etc and only entitled for back wages which alone comes about Rs.5,27,627.37 and the said amount with interest of 6% per annum from the date of due till the date of payment will fetch more amount to the benefit of the employee, unless he gives up the same and if he permitted to withdraw the deposited amount with the accrued interest till date.

15. In view of the said factual matrix of the case and in view of the earlier order passed by this Court as early as on 14.03.2002, where the issue of entitlement of the employee to get the backwages has been confirmed and it has become final and accordingly the Labour Court has also computed the entire amount payable to the employee, which is higher than what the amount deposited already with the accrued interest by the management, this Court feels that the same can be part away i.e., the said deposit amount with interest and it will be comparatively more beneficial to both the writ petitioners. Hence the writ petitions are disposed of with the following order :-

(i) The petitioner in W.P.No.7108 Of 2003(employee) shall be entitled to withdraw the entire amount of Rs.4,32,558/- (Rupees four lakhs thirty two thousand five hundred and fifty eight only) with accrued interest till date, by filing formal petition before the Labour Court, Salem and the same shall be entertained and allowed by the Labour Court, Salem.

(ii) The petitioner/employee shall not make any other claims as computed by the Labour Court in C.P.620 of 2002 dated 25.08.2004. Therefore to that extent, W.P.No.21827 of 2005 filed by the management is ordered in part.

(iii) Once the necessary petition has been filed by the employee before the Labour Court, Salem to withdraw the said amount, the same shall be ordered by the Labour Court without any further delay.

(iv) Insofar as the other claims made by the petitioner/employee in W.P.No.7108 of 2003, to direct the management to re-fix the pay is concerned, since the petitioner is entitled to get backwages, the pay shall be re-fixed by the management and accordingly after re-fixation, difference of pay, if any shall be paid to the employee as arrears and the aforesaid exercise shall be undertaken by the management within a period of three months from the date of receipt of a copy of this order.

(v) It is also made clear that merely because of the petitioner/ employee accepted to withdraw the sum of Rs.4,32,558/- along with accrued interest as backwages, that shall not be construed that the petitioner/employee is entitled to get back only the said amount for the purpose of computation of his other services benefits, which shall otherwise be calculated as if that the petitioner/employee had been continued in service with all service benefits.

16. With these directions, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rts/rst

To

1. The Presiding Officer,
Labour Court, Salem.
2. The General Manager
Tamilnadu State Transport
Corporation (Coimbatore Division-II) Ltd.,
Chennai-malai Road, Erode-638 002.

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.66538

+2cc to Mr.T.Chandrasekaran, Advocate, S.R.No.66735 & 66736

W.P.Nos.7108 of 2003 &
21827 of 2005
W.P.M.P.No.23778 of 2005 and
W.V.M.P.No.2331 of 2005

MR(CO)
CS/11/02/2019