

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2019
CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.22165 of 2011 and
M.P.No.2 of 2011

R.Mani

... Petitioner

Vs

1.The Presiding Officer,
Labour Court, Cuddalore.

2.State Express Transport Corporation Limited,
Rep by its General Manager,
Pallavan Salai,
Chennai 600 002.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the order No.001227/HR4/SETCTN/2010 dated 19.01.2011, issued by the second respondent, quash the same in so far as denying and not paying the petitioner wages from the date of award to the date of reinstatement and also in so far as ordering for recovery of a sum of Rs.42,504/- which was paid to the petitioner towards 17(B) wages and consequently, direct the first respondent to permit the petitioner to withdraw the amount lying to the credit of I.D.No.207/1992 and the second respondent to pay the petitioner the balance amount after adjusting the above deposit amount and also the balance amounts paid to the petitioner towards 17(B) wages and also to settle the petitioner forthwith all terminal benefits together with interest, award costs.

For Petitioner : Mr.V.Ajoy Khose
For Respondents : R1-Court
: Ms.Rajeni Ramadoss for R2

ORDER

Heard Mr.V.Ajoy Khose, learned counsel for the petitioner and Ms.Rajeni Ramadoss, learned standing counsel appearing for the second respondent.

2. The petitioner has approached this Court, seeking the following relief:-

“To issue a writ of Certiorarified Mandamus, to call for the records pertaining to the order No.001227/HR4/SETCTN/2010 dated 19.01.2011, issued by the second respondent and quash the same in so far as denying and not paying the petitioner's wages from the date of award to the date of reinstatement and also in so far as ordering for recovery of a sum of Rs.42,504/- which was paid to the petitioner towards 17(B) wages and consequently, direct the first respondent to permit the petitioner to withdraw the amount lying to the credit of I.D.No.207/1992 and the second respondent to pay the petitioner the balance amount after adjusting the above deposit amount and also the balance amounts paid to the petitioner towards 17(B) wages and also to settle the petitioner forthwith all terminal benefits together with interest, award costs. ”

3. The case of the petitioner is as follows:-

(i) The petitioner was employed in the second respondent Corporation as a Driver. He originally joined on 28.05.1986 and was made permanent on 05.08.1987. In pursuance of the disciplinary action initiated against him, he was dismissed from service by an order dated 17.09.1988. Against the order of dismissal, the petitioner raised an industrial dispute in I.D.No.862 of 1989. Subsequently, the industrial dispute was transferred to Labour Court, Cuddalore and re-numbered as I.D.No.207 of 1992.

(ii) The Labour Court after hearing the parties to the proceedings, passed an award on 23.11.1998, directing reinstatement of the petitioner with continuity of service, backwages and with other attendant benefits. As against the award of the Labour Court, the second respondent Corporation filed a writ petition in W.P.No.5044 of 2000. When the writ petition was admitted, an interim stay was granted, staying the operation of the award. During the pendency of the writ petition, the petitioner was also paid 17(B) wages. Thereafter, this Court, by final order dated 10.12.2009, disposed of the writ petition by confirming the award of the Labour Court in regard to the reinstatement, continuity of service and other benefits, but, modified the award only to an extent of grant of backwages to the petitioner. This Court while disposing of the writ petition, modified the award, stating that

the petitioner herein was not entitled for backwages.

(iii) After passing of the order on 10.12.2009, the petitioner sent a legal notice on 19.01.2010, requesting the second respondent Corporation to comply with the award by granting reinstatement to the petitioner with attendant benefits. In pursuance of the request, the second respondent Corporation ordered petitioner's reinstatement on 19.01.2011 and after a short stint, the petitioner retired from service on 31.05.2011, on reaching the age of superannuation. After retirement, the petitioner was granted gratuity. While so, the second respondent passed an order on 19.01.2011, seeking to recover certain amount from the petitioner's salary and the terminal benefits. The said order is impugned in the present writ petition.

4. The learned counsel for the petitioner would submit that by order dated 19.01.2011, the second respondent Corporation in the guise of denying the petitioner's backwages was in effect seeking to recover the 17(B) wages granted to the petitioner during the pendency of the writ petition before this Court. According to the learned counsel, this Court while disposing of the writ petition in W.P.No.5044 of 2000, dated 10.12.2009, has only denied the backwages to the petitioner during the period of his non-employment from 17.09.1988 and till the date of the

award on 23.11.1998. After the award was passed, the petitioner became entitled to last drawn wages in lieu of reinstatement. Therefore, the question of recovery from the terminal benefits of the petitioner towards 17(B) wages already sanctioned and disbursed to him, did not arise at all.

5. The learned counsel would also submit that the Corporation has also not fixed the wages of the petitioner by allowing the benefit of continuity of service and other attendant benefits granted by the Labour Court which benefit was confirmed by this Court in the above said writ petition by notional fixation of his salary and other allowances for the period of the petitioner's non-employment for the purpose of payment of wages to the petitioner on his reinstatement and also pensionary benefits on his retirement on 31.05.2011. In the said circumstances, the impugned order passed is liable to be interfered with.

6. On the other hand, the learned counsel appearing for the Corporation would submit that the recovery as directed in the order dated 19.01.2011 is on the basis of the calculation reached by the Corporation as certain excess amount has been paid to the petitioner than what was due to him. In support of the contention, two calculations were produced before this Court, clarifying the basis of the recovery ordered by under the impugned order. He would therefore submit that the contention of the

petitioner may not be true or correct as the Corporation was only attempting to recover the excess amount paid to the petitioner.

7. This Court is not inclined to go into the factual controversies as to the basis of the recoveries which are sought to be made against the petitioner. The two calculation sheets which are produced for perusal of this Court do not clinchingly settle the rival claims of both the petitioner as well as the second respondent Corporation.

8. The learned counsel for the petitioner would further submit that according to his instructions that the wages which was paid after the award was passed by the Labour Court on 10.12.2009 and till his reinstatement on 19.01.2011, has been subjected to recovery on the mistaken impression that the backwages are denied to the petitioner by order of this Court in W.P.No.5044 of 2000 dated 10.12.2009, what was denied was only the backwages during the period of non-employment from 17.09.1988 till 23.11.1998 and not thereafter. Therefore, he would request this Court to clarify the position in regard to the calculation given by the Corporation. On the basis of the clarification by this Court, the petitioner can sort out the issue with the Corporation.

9. This Court has considered the rival submissions made on behalf of

the parties. Admittedly, the award of directing reinstatement, continuity of service and other benefits passed by the Labour Court, has been confirmed by this Court in W.P.No.5044 of 2000, *vide* order dated 10.12.2009. While disposing of the writ petition, this Court has modified only the grant of backwages to the petitioner as per the award which would only mean that the backwages which was payable to the petitioner from 17.09.1988 till 23.11.1998 i.e., during the period of non-employment of the petitioner and not after the award was passed, directing reinstatement of the petitioner. Therefore, if the Corporation had passed any order seeking to recover the excess amount paid to the petitioner during the period in which the award was in operation, but, for stay of this Court and during the period when 17(B) wages was paid to the petitioner, cannot be subjected to any recovery at all.

10. Further, the petitioner who was directed to be given continuity of service and all other attendant benefits by the Labour Court in its award, is entitled to his wages fixed notionally for the entire period of his non-employment and subsequent reinstatement on 19.01.2011 and till retirement and also re-calculation of pensionary benefits on such notional fixation. Mere denial of backwages for the period of non-employment, cannot take away the right of the petitioner to have his salary fixed on notional basis as that alone would be the benefit which may flow from the

direction of continuity of service and other benefits in terms of the award of the Labour Court in I.D.No.207 of 1992 dated 23.11.1998. In fact, the learned counsel for the petitioner in this regard has relied on a decision in the case of **Mahabir Prasad Vs. Delhi Transport Corporation**, reported in **2014-IV-LLJ-413(Del)**. He would particularly draw the attention of this Court to paragraph Nos.20 and 21 of the order which are extracted below:-

“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.”

The above decision of the Delhi High Court squarely covers the issue in regard to the fixation of wages payable to the petitioner in terms of the benefit granted by the Labour Court towards continuity of service and all other attendant benefits.

11. In the above circumstances, this Court clarifies that the petitioner is entitled to wages from the date of the award i.e., from 23.11.1998 and any last drawn wages paid to him from that date cannot be subjected to any recovery at all. Therefore, if any such recovery is made under the impugned order, the same is illegal. Further, the petitioner is also entitled to the notional fixation of his wages for the entire period between the date of dismissal from service and the date of his reinstatement and entitled to other consequential pensionary benefits after his retirement on 31.05.2011. This Court refrains from setting aside the order impugned in the writ petition, since there is no clarity in the order as to what was sought to be recovered from the petitioner. In any event, the

above clarification would suffice to the claim of the petitioner *vis-a-vis* the action taken by the second respondent Management *vide* impugned order dated 19.01.2011.

12. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2019

Speaking/Non-speaking order
Index:Yes/No
Internet:Yes
gsk

To

1.The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Towers-II,
Egmore, Chennai 600 008.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Salem.

3.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Vellore.

V.PARTHIBAN,J.

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W.P.No.22165 of 2011

12.04.2019

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