

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.09.2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14268 of 2017

The Management,
Tamil Nadu Civil Supplies Corporation
Head Office Through the Managing Director,
No.12, Thambusami Salai, Chennai - 600 101 ..Petitioner

vs

1.R.Thangavelu

2.The Presiding Officer,
Labour Court, Coimbatore. ..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order made in C.P.49 of 2009 dated 26.11.2012 on the file of the 2nd respondent / Labour Court, Coimbatore and quash the same.

For Petitioner : Mr.P.Paramasivadosh

For Respondents : R1 - No appearance
R2 - Court

O R D E R

The order dated 26.11.2012 passed in a Computation Petition No.49 of 2009 by the Labour Court, Coimbatore is under challenge in the present writ petition.

2. The learned counsel for the writ petitioner states that the 1st respondent workman was working as an employee in the writ petitioner Tamil Nadu Civil Supplies Corporation from 24.01.1973 onwards and reached the age of superannuation on 28.02.2003. He retired as a Foreman. The 1st respondent workman had received the entire terminal and retirement benefits and after deducting the amount payable to the Corporation by him such as out turn shortage and other recoveries to the tune of Rs.19,300/- (Rupees Nineteen Thousand and Three Hundred only). In respect of the said recovery amount, the 1st respondent filed a claim petition

in C.P.No.49 of 2009 to reimburse the recovered amount from the retirement benefits. As per the service rules and the regulations of the Corporation, the loss if any occurred at the instance of the workman, the same can be recovered by issuing a Show Cause Notice and an opportunity to the employee concerned. Such an order of recovery cannot be adjudicated in a Computation Petition. The 1st respondent workman filed the claim petition after six(6) years from the date of his retirement under Section 33 C (2) of the 'Industrial Disputes Act, 1947' [hereinafter referred to as 'ID Act']. Thus, the writ petition itself was filed beyond the period of limitation and the 2nd respondent ought not to have entertained the computation petition at all.

3. The learned counsel appearing on behalf of the writ petitioner states that the 1st respondent workman has not established any pre-existing right, so as to invoke the provisions of Section 33 C (2) of the ID Act. In the absence of any pre-existing right, the Computation Petition cannot be entertained at all. Even the findings of the Labour Court states that "the 1st respondent retired on 28.03.2003 as a Foreman. At the time of paying arrears of salary, the respondent has deducted a sum of Rs.35,839/- (Rupees Thirty Five Thousand Eight Hundred and Thirty Nine only) on account of out turn shortage. The petitioner is not responsible for any out turn shortage. The respondent has not conducted any enquiry with regard to the alleged out turn shortage. Without conducting any enquiry, the respondent has passed an order to deduct the amount of Rs.35,839/-. Since the petitioner is not liable to pay the said amount, respondent is bound to pay the said amount with interest at the rate of 12% per annum from 16.02.2005 till the date of realisation."

4. Adjudication before the Labour Court proceeded on the footing that the recovery imposed for out turn shortage is to be reimbursed to the workman. Such an adjudication is impermissible in view of the fact that the order of recovery is imposed based on the fact that the Management identified out turn shortage and accordingly, a Show Cause Notice was issued and after providing an opportunity, the order, deducting the amount from the pensionary benefits were passed in proceedings dated 05.02.2003, which was marked as Exhibit M-10. Exhibit M-12 is also the copy of the proceedings dated 19.08.2002 in relation to the recovery. Exhibit M-11 dated 13.02.1985 is the rules for the deduction of the amount. Thus, the deduction of the amount for out of turn shortage was imposed based on the rules in force and therefore, the Computation Petition cannot be an appropriate remedy for the purpose of challenging the order of deduction passed by the writ petitioner Management. The validity of the order of deduction cannot be tested in a Computation petition. As for filing a petition under Section 33 C (2) of the ID Act, the workman has to establish a pre existing right, which was not established.

Even the findings of the Labour Court reveals that the order of recovery was adjudicated and the recovery imposed based on the rules, after issuing a Show Cause Notice cannot be adjudicated in a Claim petition, more specifically, under Section 33 C (2) of the ID Act. If at all, the workman is aggrieved from and out of such recovery order, he has to prefer an appeal before the competent Appellate authority and thereafter, before the appropriate Forum. Contrarily, a petition under Section 33 C (2), which is filed after a lapse of six years from the date of retirement cannot be entertained.

5. In the present case, the writ petitioner was allowed to retire from service on 28.02.2003 and the petition under Section 33 C (2) was filed during the year 2009, after a lapse of about 6 years.

6. For all these reasons, the award passed by the Labour Court is perverse and unsustainable. Consequently, the award passed by the 2nd respondent in C.P.No.49 of 2009 dated 26.11.2012 is quashed and the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court, Coimbatore.

+1cc to Mr.P.Paramasivadoss, Advocate Sr.77837

W.P.No.14268 of 2017

PP (CO)
CB(15/10/2019)