

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 2790 of 2020

R.Kumar

... Petitioner

-vs-

The Special Officer,
NADT Adi Dravidar Welfare School Teachers,
Co-operative Thrift and Credit Society Limited,
No.53, Bharathiyar Street,
Fort Round, Vellore - 632 001. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records from the learned Labour Court, Vellore pertaining to the impugned order in C.P. No. 14 of 2011 dated 16.12.2019 and to quash the same and consequently to pay the backwages of Rs.3,17,277/-.

For Petitioner : Mr. P.Vijendran

For Respondent : Mr. Ramachandran for
Mr. P.S. Sivashanmugasundaram

O R D E R

The prayer sought for in this Writ Petition is for a Writ of Certiorarified Mandamus to call for the records from the Labour Court, Vellore pertaining to the impugned order in C.P.No. 14 of 2011 dated 16.12.2019 and to quash the same and consequently to pay the backwages of Rs.3,17,277/-.

2. The necessary facts which are required to be noticed for disposal of this Writ Petition are as follows:

(i) That the petitioner was an employee of the respondent / Management, where there had been Disciplinary Proceedings against the petitioner, which resulted in removal of service by order of dismissal or termination made by the Management on 12.10.1994. Challenging the termination order, the petitioner / employee raised an Industrial Dispute in I.D. No. 4 of 1997 on the file of the Principal Labour Court, Vellore, where the Labour Court has passed an Award in the said I.D. on 11.06.2004, whereby the Labour Court, by setting aside the Order of termination made against the employee, directed the

Management to reinstate the petitioner with continuity of service and also backwages.

(ii) Aggrieved over the same, the Management preferred the Writ Petition in W.P. No. 28457 of 2004, where this Court has passed an order on 08.04.2009, confirming the Award passed by the Labour Court in I.D. No. 4 of 1997 dated 11.06.2004. However, aggrieved over the said order passed by this Court, the respondent / Management preferred an Intra Court Appeal in W.A. No. 42 of 2010. The said Writ Appeal was finally decided by the Division Bench of this Court, by Judgment, dated 25.10.2010 whereby, the Division Bench having confirmed the Labour Court Award, however modified the same to the effect of backwages, where the Division Bench has allowed only 50% of the backwages to the petitioner / employee.

(iii) Pursuant to the said order passed by the Writ Court as has been confirmed, with the modification of the Division Bench of this Court, the petitioner was reinstated on 14.11.2011. Therefore, it is a fact that from 12.10.1994 till 14.11.2011, the petitioner was not in service. Before the order of termination dated 12.10.1994, the petitioner was suspended from service on 14.10.1993, therefore from 14.10.1993 till 11.10.1994, the petitioner was under suspension and might have received only the subsistence allowance and thereafter, during that period he was out of service and he did not receive the salary. In this context, if the petitioner is entitled to get 50% of backwages that should be commenced from 14.10.1993 till 13.11.2011 as he was reinstated on 14.11.2011.

(iv) Subsequent to this, it seems that, Computation Petition was filed by the petitioner in C.P. No. 14 of 2011, where the Labour Court by order dated 13.09.2012 by taking into account, the calculation filed by both sides with regard to 50% of the backwages, has passed an order that the C.P. was partly allowed and the respondent / Management was directed to pay 50% of total backwages which was quantified as Rs.8,70,450/-, being the 50% of the backwages of Rs.17,40,901/-. Thereafter, the earlier amount received by the petitioner to the extent of Rs.4,66,129/- was deducted and therefore, the net due payable by the Management to the petitioner was Rs.3,17,277/- and the same was directed to be paid within a period of three months.

(v) As against the said order passed by the Labour Court in the said C.P. No. 14 of 2011, again the Management filed a Writ Petition in W.P. No. 850 of 2013. The said Writ Petition was finally disposed by this Court on 15.03.2019, where after considering the rival submissions made by the parties, the learned Judge of this Court has remanded back the matter to the Labour Court for the purpose of adducing evidence to show whether the second respondent was engaged on consolidated pay or not. Since the matter pertains to the award of the year

2004, the Labour Court was directed to dispose of the said C.P., within a period of two months.

(vi) Therefore the C.P. No. 14 of 2011 got restored and was again heard by the Labour Court, before which, both parties were permitted to let in fresh evidence to establish the fact as to the actual salary payable to the petitioner / employee and accordingly what shall be the 50% of the backwages payable to the petitioner / employee.

(vii) Since such opportunity was given to both sides, on the side of the petitioner, 16 documents i.e., Exs.P1 to P16 were filed and on the side of the Management, 60 documents i.e., Exs.R1 to R60 were filed.

3. Considering all those documents, among which, the document of Calculation Statement i.e., Ex.R45 was also filed, where the calculation had been given by the Management and taking into account the said calculation given by the Management, the Labour Court, in the impugned order or the Award passed in C.P. No. 14 of 2011, dated 16.12.2019 rejected the Computation Petition, on the ground that, the entire amount payable by way of 50% of backwages, since has been paid, no further amount is due from the employer / Management and therefore, accordingly the Computation Petition filed by the petitioner was dismissed. Aggrieved over the same, the petitioner / employee has filed the present Writ Petition with the aforesaid prayer.

4. Heard Mr.P.Vijendran, learned counsel appearing for the petitioner who would submit that, though direction was given by this Court in W.P. No. 850 of 2013 dated 15.03.2019 to let in evidence to substantiate the calculation of 50% backwages by the petitioner, no such fresh evidence was able to be produced before the Labour Court and in this Context, the calculation memo already filed by the petitioner side was requested to be taken into account, however the said calculation memo filed by the petitioner side was not considered in proper perspective by the Labour Court and accordingly by accepting Ex.R45 filed by the Management, since the Labour Court has decided the Computation Petition rejecting the claim of the petitioner, the said order is liable to be interfered with, hence he seeks indulgence of this Court.

5. On the contrary, Mr.P.S. Sivashanmugasundaram, learned counsel appearing for the respondent / Management, by relying upon not only the Ex.R45 filed before the Labour Court, but, based on the calculation filed by the petitioner, in the earlier round itself would state that, from 1993 to 1994 i.e., from 14.10.1993 till 11.10.1994, the petitioner was under suspension and on 12.10.1994, he was terminated from service. After all these legal battle, ultimately, the petitioner was reinstated on 14.11.2011. Therefore, if at all the salary payable to the employee to be calculated for paying the sum as 50% as has been allowed or directed by this Court, the same

shall be calculated from 14.10.1993 till 13.11.2011. In this context, the calculation filed by the petitioner itself, coinciding with the calculation given by the respondent, would state that, the petitioner was under consolidated pay all along till the year 2000. Only in the year 2000, Government issued a Government Order in G.O. (Ms) No. 89, Cooperation Food and Consumer Protection Department dated 16.05.2000, whereby the petitioner / employee was brought under regular time scale of pay. Therefore, from 1993 to 2000, the petitioner was under consolidated pay and thereafter, he was under time scale of pay, therefore accordingly the pay was calculated and the same had been paid to the petitioner and this calculation alone was shown before the Labour Court under the Ex.R45 which has been accepted by the Labour Court, of course rightly, therefore entire due of 50% backwages since has been paid to the petitioner, no further amount was payable in this regard and accordingly the Labour Court has rightly rejected the Computation Petition in C.P. No. 14 of 2011 of the petitioner and therefore, the impugned order does not require any interference from this Court, he contended.

6. I have considered the said submissions made by both sides and have perused the materials placed before this Court.

7. The controversy is in very narrow compass, since the petitioner is entitled to get 50% backwages during the period between 14.10.1993 and 13.11.2011. In this period, from 1993 to 1994 i.e., till 12.10.1994, he was under suspension and thereafter, he was terminated on 12.10.1994 and he was in out of service and got reinstated only on 14.11.2011.

8. During these period, up to the year 2000, the petitioner has been under consolidated pay and calculation to that effect was filed not only by the respondent, but also by the petitioner, and the copy of the same has been filed in the typedset of papers which has been perused.

9. As has been rightly pointed out by the learned counsel appearing for the respondent / Management, the petitioner was brought under time scale of pay only in the year 2000, if at all the time scale of pay is taken into account for the purpose of calculating the 50% of salary during the relevant period, that shall be taken into account only from 2000 to 2011 and not from 1993. Therefore, the said calculation having been made by the respondent, the ultimate amount payable by way of backwages was quantified as Rs.17,40,901/-. In this context, what is the total sum payable to the petitioner, what is the 50% gross amount, what was already paid and the amount which are held with the EPF contribution etc., have been clearly stated in the said calculation memo and in order to peruse the same, for the quick reference, the memo is extracted herein:-

Total Gross Amount	Rs.17,40,901.00
50% of Gross Amount	Rs. 8,70,451.00
Deduct: 10% EPF Amount from the 50% of Gross Amount	Rs. 87,045.00
Total	Rs. 7,83,406.00
Less: Already received amount by the petitioner from the Management	Rs. 4,66,129.00
Balance amount entitled by the petitioner	Rs. 3,17,277.00

10. The remaining amount is only a sum of Rs.3,17,277/- and the said amount has also been admittedly paid to the petitioner.

11. In this context, even though, Mr.P.Vijendran, learned counsel appearing for the petitioner made a request before this Court to give one more chance to let in evidence to substantiate his case, entitling him for still more salary due as permitted by the Court in Writ Appeal order, this Court feels that, that would be a futile exercise. The entire salary details of the petitioner having been worked out during the period i.e., from 1993 to 2011, had been clearly given in the calculation memo, which reveals that, up to the year 2000 he was under consolidated pay and only thereafter from 2001 to 2011, he was under time scale of pay. Calculating both consolidated pay as well as time scale of pay, the said calculation was made, which accordingly decided the sum payable to the petitioner and after deducting the amount already paid and the amount which were held under EPF contribution, the balance sum is only Rs.3,17,277/- and the said amount also since has been admittedly paid, no further sum can be expected from the Management to be payable to the petitioner under the head of 50% salary to be paid during out of service period.

12. Therefore, this Court feels that, there is absolutely no wrong in the order passed by the Labour Court in Computation Petition in C.P. No. 14 of 2011 dated 16.12.2019 which is impugned herein and hence the said order is liable to be sustained accordingly it is sustained.

13. Therefore, the petitioner cannot seek any indulgence against the said order, accordingly the Writ Petition fails, therefore it is liable to be dismissed, accordingly is dismissed.

14. However, Mr.P.Vijendran, learned counsel appearing for the petitioner would contend that, in the year 2004, by conditional order passed by this Court in W.P.

No. 28457 of 2004, a sum of Rs.1,14,950/- was deposited in the Labour Court account, where the petitioner received only 50%, the remaining 50% still there, therefore, the said amount can be permitted to be withdrawn by the petitioner.

15. However, Mr.P.S.Sivashanmugasundaram, learned counsel appearing for the respondent stated that, the entire amount deposited has already been withdrawn by the petitioner and therefore nothing is there in the said account.

16. Be that as it may, if at all, any amount is still lying in the said I.D. account, the said amount is certainly entitled to be received only by the petitioner. Therefore, it is open to the petitioner to verify the same and find out from the Labour Court that any amount, still lying in the said I.D. If no such amount is remaining in the said account, it is presumed that the entire amount deposited already was withdrawn by the petitioner and no further claim can be made by the petitioner under any head or any amount pertaining to the issue raised in this regard. If still any amount lies, the petitioner can very well withdraw the same.

17. With these observations, the Writ Petition is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vji

To

The Special Officer,
NADT Adi Dravidar Welfare School Teachers,
Co-operative Thrift and Credit Society Limited,
No.53, Bharathiyar Street,
Fort Round, Vellore - 632 001.

+1cc to Mr.P.Vijendran, Advocate, S.R.No. 35987

+1cc to Mr.P.S.Sivashanmugasundaram, Advocate, S.R.No. 36198

W.P. No. 2790 of 2020

PM(CO)
GN(17/02/2021)