

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 03.12.2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.16415 of 2020 and

W.P.No.16639 of 2020

G.Sridhar Babu ... Petitioner in W.P.No.16415 of 2020

R.Sudhakar @

R.Parthasarathy

... Petitioner in W.P.No.16639 of 2020

Vs.

M/s.State Express Transport Corporation,
Represented by its Managing Director
No.2, Pallavan Salai,
Chennai - 600 002.

... Respondent in both WPs.

Prayer in WP.No.16415 of 2020 : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the Principal Labour Court, Chennai in Claim Petition No.166 of 2014 dated 11.11.2019 and quash the same and consequently direct the Principal Labour Court, Chennai to compute back wages in the light of award passed in I.D.No.332 of 2001 dated 31.10.2007 and in view of appeal filed by the respondent in W.P.No.30751 of 2008 dated 22.07.2011, W.A.S.R.No.841 of 2012 dated 03.03.2016 and SLP(C).No.034726 of 2016 dated 05.12.2016 dismissed by the Hon'ble High Court of Madras and Supreme Court of India.

Prayer in WP.No.16639 of 2020 : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the Principal Labour Court, Chennai in Claim Petition No.167 of 2014 dated 11.11.2019 and quash the same and consequently direct the Principal Labour Court, Chennai to compute back wages in the light of award passed in I.D.No.334 of 2001 dated 31.10.2007.

For Petitioners

: Mr.D.Soundar Raj

For Respondent

: Mr.K.Kathiresan

Standing Counsel for
Transport Corporation

COMMON ORDER

Since the issue raised in both the writ petitions are one and the same and the respondent in both the cases are same, with the consent of the learned counsel appearing for both sides,

these writ petitions were heard together and being disposed of by this common order.

2. That a set of employees including these petitioners had raised industrial dispute against the respondent Transport Corporation for seeking reinstatement with backwages and continuity of service. Accordingly, they filed industrial disputes in I.D.Nos.332 of 2001 to 339 of 2001 on the file of the Principal Labour Court, Chennai, where, the petitioner in W.P.No.16415 of 2020 filed I.D.No.332 of 2001 and the petitioner in W.P.No.16639 of 2020 filed I.D.No.334 of 2001. These two I.Ds. along with the connected I.Ds., as referred to above, were decided by a common award of the Labour Court dated 31.10.2007, where, the Labour Court passed the following order;

"13) In the result, Common award is passed directing the respondent to reinstate the petitioner in each I.D. (I.D.Nos.332/2001 to 339/2001) with continuity of service and all other attendant benefits but without backwages and accordingly these Industrial Disputes are allowed in part. No costs."

3. Thus, the Labour Court passed an order directing the respondent employer to reinstate the petitioners and others with continuity of service, however, backwages were denied.

4. Aggrieved over the same, the respondent Transport Corporation filed separate writ petitions in a batch of cases in W.P.No.29492 of 2007 and W.P.Nos.30748 to 30753 of 2008 etc. in which the corresponding writ petition filed by the respondent Transport Corporation against the award passed in respect of the petitioner Sridhar Babu's case is W.P.No.30751 of 2008, like that, in respect of Sudhakar @ R.Parthasarathy, the petitioner in W.P.No.16639 of 2020, it was W.P.No.30749 of 2008.

5. All those batch of writ petitions were heard by a learned Judge of this Court and by order dated 22.07.2011, the learned Judge passed the following order in those writ petitions.

"10. In the light of the above all the writ petitions, except W.P.No.29492 of 2007 stand dismissed. In W.P.No.29492 of 2007 while the workmen is eligible for reinstatement with continuity of service and other attendant benefits, the grant of backwages is not supported by the judgment rendered above. Therefore, in respect of I.D.No.68 of 2001 dated 22.09.2006, the award will stand modified and the workman is eligible for reinstatement with continuity of service with other attendant benefits but without backwages."

11. In the result, W.P.No.29492 of 2007 is partly

allowed as indicated above. W.P.Nos.30748 to 30753 of 2008, 2735 & 2736 of 2009, 6152 of 2009 & 6169 of 2009 stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

6.Felt aggrieved over the said common order passed by the learned Single Judge, in the said batch of writ petitions, the respondent Transport Corporation belatedly filed writ appeals and in this regard, in W.A.Sr.Nos.841, 847, 850, 853, 865, 868 of 2012, petition to condone the delay of 1276 days were filed to condone the delay in filing the respective writ appeals, as referred to above. However, a Division Bench of this Court, at the SR stage of the writ appeals, rejected the condone delay petition filed by the respondent employer by order dated 03.03.2016 with the following order:

"8. There is no reasonable explanation for condonation of delay of 1276 days in representing the writ appeals. The common award was passed as early as on 31 October 2007. The writ petitions were dismissed on 22 July 2011. Even then, the petitioner has not taken any action to challenge the order passed by the Writ Court, within a reasonable period. We are not in a position to accept the reasons given by the petitioner to condone the delay."

7.Against which, it seems that, Special Leave Petition also was filed by the respondent Transport Corporation and that SLP also was rejected at the admission stage. Thus, the award passed by the Labour Court dated 31.10.2007 has become final atleast insofar as these petitioners and some other employees are concerned.

8.Despite these orders, having been passed by hierarchy of judicial forum upto Hon'ble Supreme Court of India, the respondent Transport Corporation seems to have not come forward to reinstate these petitioners and others. Therefore having waited for all these years, they decided to approach the Labour Court by filing computation petitions under Section 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'I.D. Act') and in this regard, the petitioner Sridhar Babu filed C.P.No.166 of 2014 and the petitioner Sudhakar @ R.Parthasarathy filed C.P.No.167 of 2014. In the said computation petitions, the respective petitioners sought for computation of the wages and other allowances payable to them for the period from 31.10.2007 the date on which the Labour Court passed award till 31.03.2014 the date on which they filed the computation petitions. Both the computation petitions were heard and decided by two separate orders of the Principal Labour Court, Chennai dated 11.11.2019, where, the Labour Court has

rejected the claim made in the computation petitions filed by the petitioners. Aggrieved over the said order passed by the Labour Court rejecting their computation petitions, these petitioners have filed these two writ petitions with the aforesaid prayer.

9.I have heard Mr.D.Soundar Raj, learned counsel appearing for the petitioners, who would submit that, the order of the Labour Court dated 31.10.2007 has become final and there can be no quarrel on that. When that being so, as per the Award, these petitioners should have been reinstated with continuity of service, however all these years, there has been legal issues where writ petition was filed in the year 2008 and writ appeal was filed belatedly in the year 2012 and SLP was filed in the year 2016 and after exhausting all these legal remedies available for the respondent Transport Corporation, they are belatedly come forward to reinstate the petitioners only in the year 2017.

10.However, in the meanwhile, since these petitioners had been out of service for several years despite the Award passed in favour of them by the Labour Court in October 2007, they approached the Labour Court by filing computation petition under Section 33(C)(2) of the Act. However, the Labour Court, instead of deciding the computation sought for by the petitioners as per the Labour Court Award dated 31.10.2007, has completely rejected their claim on an erroneous assumption about the facts and merits of the case and therefore, the impugned orders made in both the cases are liable to be set aside and the matter can be remitted back to the Labour Court for reconsideration.

11.On the other hand, Mr.K.Kathiresan, learned Standing Counsel appearing for the respondent Transport Corporation had submitted that, though the Labour Court Award dated 31.10.2007 has become final, in view of the continuous of course unsuccessful attempt made by the respondent Transport Corporation before this Court as well as the Hon'ble Supreme Court and pursuant to which in the year 2017, these petitioners were reinstated, they cannot seek for exorbitant salary according to their presumption without having any valid documents to establish that, what was the salary lastly they drawn, when they were terminated and based on which, from 01.11.2007 till their reinstatement or till the date of filing of the computation petitions, what was the actual amount payable by the respondent Transport Corporation by way of wages having not been properly projected by the petitioners, the claim made by these petitioners to the extent of nearly about Rs.15 lakhs by each of the petitioner, for which, absolutely there can be no support by way of documents and this aspect since has not been established by the petitioners before the Labour Court, first of

all they are not entitled for such a huge claim of computation amount from the respondent Transport Corporation.

12. Apart from that, the learned Standing Counsel also was trying to sustain the order which is impugned herein in entirety on the very same reasons adduced by the Labour Court especially at para 11 of the impugned order and ultimately, the learned Standing Counsel for the respondent would submit that, the order impugned can very well be sustained and if at all any amount they are entitled to seek for from the respondent employer, that should be only from the date they have been reinstated as from the date of award passed by the Labour Court, no express request had been made or no steps have been made by the petitioners to get reinstatement and therefore, for the said fault on the part of the petitioners, the respondent Transport Corporation cannot be blamed, he contended.

13. I have considered the said rival submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

14. As has been rightly pointed out by the learned counsel appearing for the petitioners, the Labour Court Award dated 31.10.2007 has become final as successively the attempt made by the Transport Corporation before this Court as well as the Hon'ble Supreme Court ended in failure. The import of the Labour Court Award as has been confirmed by this Court in the earlier round of litigation is that, each of the petitioner would be entitled to get reinstatement with continuity of service, however, their backwages were not allowed. It means that, from the date of award, they would be entitled to get reinstatement. Though such an entitlement has been recognised by the Labour Court which has been successively confirmed by other legal forum, in all these years, the issue had been delayed not by the petitioners and only by the respondent Transport Corporation as they only chosen to file writ petition in the year 2008 where they lost the case in the year 2011 and thereafter, they filed writ appeals belatedly and those writ appeals also at the SR stage were rejected on the petition to condone the delay itself by order dated 3.03.2016 and even thereafter their attempt to go for further higher judicial forum has continued, where they filed SLP also some time in December 2016 where also they suffered an order against them and only after exhausting all these legal remedies which were available before them, the respondent Transport Corporation had come forward to reinstate these petitioners belatedly in the year 2017. Therefore, such a delayed reinstatement and the reasons for such a delayed reinstatement cannot be attributable on the petitioners, instead it can only be attributable on the respondent Transport Corporation.

15. Therefore, it has become quite clear that, these petitioners are entitled to get wages from atleast 01.11.2007 till reinstatement and therefore, for the period from 01.11.2007 till 31.03.2014 i.e. at the time of filing the computation petitions, these petitioners were certainly entitled to get the wages, which they sought to be computed in the respective computation petitions filed by these petitioners. Unfortunately these aspects have not been considered in proper perspective by the learned Judge, who passed the impugned order in both the cases and he has completely misdirected which is evidenced at para 10 and 11 of the impugned order which are extracted hereunder.

"10. The Ex.P1 is the order of the Labour Court in I.D.No.332/2001, dated 31.10.2007. Subsequently the respondent filed Writ Petitions before the Hon'ble Court against the petitioner and others namely Murali, Sudhakar @ Parthasarathy, Palani, Sridhar, Babu, Uma Mahesh, Varadhan @ Varadharajan, Thirupathi, Ravi and Sakthi. The Writ Petitions are 29492 of 2007, 30748 to 30753 of 2008, 2735, 2736 of 2009, 6152 of 2009 and 6169 of 2009. The petitioner is the respondent in W.P.30751/2008 which was disposed by the Hon'ble High court on 22.07.2011. The observation is that " In the light of all the Writ Petitions except W.P.29492/2007 stand dismissed. In W.P.29492/2007 while the arguments, is eligible for reinstatement with continuity of service and other attendant benefits. The grant of back wages is not supported by the Judgment rendered above. Therefore, in respect of I.D.No.681/2001, dt. 22.09.2006 the Award will stand modified that the workman is eligible for reinstatement with continuity of service and all other attendant benefits but without back wages." So the Award passed by the Court was confirmed by the Hon'ble High Court by the said Writ Petitions except the Writ Petition 29492/2007 which was modified the award of I.D. though the back wages not granted. If it is so, the Ex.P3 is the order in Contempt Petition 1030/2013, dated 04.07.2013 is directed the respondent and the petition has remedy before the Labour Court while filing Section 33(3)(2) application. Hence the contempt petition is dismissed. In which Thirupathi who is the petitioner in the contempt application.

11. Whether the rule of Contempt Petition is applicable to the petitioner. The Court finds that the petitioner is not the petitioner in Contempt Petition 1030/2013. Since Thirupathi was the petitioner who got order remedy for back wages. Further the Labour Court

was passed an order to reinstatement with continuity of service, attendant benefits except back wages. It is pertinent to note that the Trial Court was disallowed the claim made by the petitioner for back wages on the principle of no work and no pay which was confirmed by the Hon'ble High Court also. If it is so, without attempt to get reinstatement by process to the claim of back wages prior to Ex.P13 not satisfied the spirit of order of this Court in I.D.No.332/2001 and W.P.30751/2008. Therefore the court is decline to accept the petition. Furthermore there is no impediment to the petitioner to institute suitable steps to punish the respondent who was inacted to reinstatement, without such kind of steps taken that the claim made by the petitioner for back wages as against the order passed by the Court and the order of confirmation in W.P.30751/2008 till 06.07.2017 is not consonance with rule of no work and no pay. Therefore the claim made by the petitioner is liable for dismissal and the same is dismissed and accordingly the points are answered.

In the result, the Claim Petition is dismissed."

16. According to the learned Judge, who passed the impugned order, one of the employee filed a contempt petition before this Court, in view of the dismissal of the writ petition filed by the management in the year 2011. In the said contempt petition, this Court was of the view that, since Labour Court Award has been passed in favour of the employees for reinstatement and continuity of service and the same having been confirmed by the Writ Court also in order to get the salaries/wages payable to them from the period i.e. from the date of the Labour Court Award, the employees can very well approach the Labour Court by filing a computation petition under Section 33(C)(2) of the Act. Accordingly, the contempt petition seems to have been closed and this has been taken into account by the Labour Court and stated that, if at all the petitioners herein, who were the petitioners in the computation petitions also had a grievance over the non-compliance of the orders i.e., award passed by the Labour Court, they should have approached the High Court by filing a contempt petition and should have adjudicated the issue. This Court is afraid of noting such an extreme proposition which has come from the Judicial Officer in the standing of the District Judge level, who passed the impugned award by giving the said reason, which has been extracted herein above. The said reason given by the Labour Court is not only unjustifiable, but it is appalling to note that, such a strange reason has been given by the Labour Court in rejecting the computation petition filed by the

employees. Therefore, this Court has no hesitation to hold that the impugned order are liable to be set aside.

17.Once the impugned order is set aside, the natural corollary would be to remit the matter back to the Labour Court for reconsideration and to pass appropriate order in the computation petition. That action may help the employees to get their salary due as per the award from the date of award till the date of filing of the computation petition.

18.However, for getting their lawful right, the petitioners have been unnecessarily driven by the Labour Court by passing the present impugned order by giving a very strange reason as has been noted herein above, for which, though this Court wants to make adverse comment against the Judicial Officer concerned, who passed the impugned order, due to the reasons that, decorum has to be maintained by the Judicial forum including this Court, this Court is not inclined to make any such comment against the Judicial Officer.

19.In the result, the impugned orders are set aside and both the writ petitions are allowed to the extent to remand the matter back to the Labour Court, who on receipt of this order, shall proceed with the computation petitions and decide the said CPs on merits and in accordance with law, of course, by taking into account the aforesaid discussion made in this order. The needful, as indicated above, shall be completed by the Labour Court within a period of three months from the date of receipt of a copy of this order.

20.With these directions, these Writ Petitions are ordered. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS.VI)

/True Copy/

Sub Assistant Registrar

To

- 1.The Presiding Officer,
Principal Labour Court, Chennai.
- 2.The Managing Director,
M/s.State Express Transport Corporation,
No.2, Pallavan Salai, Chennai - 600 002.

+1cc to Mr.D.Soundar Raj, Advocate SR.No.39116

+1cc to Mr.K.Kathiresan, ADvocate Sr.No.39043

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W.P.No.16415 of 2020 and
W.P.No.16639 of 2020