



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Contempt Jurisdiction)

Friday, the Sixteenth day of August Two Thousand and Nineteen

WEB COPY

CORAM:

The Hon'ble Mr. Justice S.M.SUBRAMANIAM

SUB.APLN(MD). Nos.104 AND 257 of 2018

IN

CONT P(MD).No.2365 of 2017

C.KALAICHEZHIAN

... Petitioner/1st Respondent in SUB.APLN(MD). No.104 of 2018
...Respondent / Petitioner in SUB.APLN(MD). No.257 of 2018

Vs

PONMUDI, THE GENERAL MANAGER (ADMN).,
HEAD OFFICE, TNSTC, PALLAVAN SALAI,
CHENNAI.

...Respondent / Petitioner in SUB.APLN(MD). No.104 of 2018

PONMUDI, THE GENERAL MANAGER,
SETC (TAMIL NADU) LTD., PALLAVAN SALAI,
CHENNAI.

...Respondent / Petitioner in SUB.APLN(MD). No.257 of 2018

Prayer in SUB.APLN(MD). No.104 of 2018 :-

Sub Application is filed under Section 151 of Civil Procedure Code, praying this Hon'ble Court to re-call the order dated 09.02.2018 closing the Cont P(MD).No.2365 of 2017 in MP(MD).No.3 of 2015 in WP(MD).No.1241 of 2015 and re - open the same on the file.

Prayer in CONT P(MD).No.2365 of 2017 :

Contempt petition is filed under Section 11 of Contempt of Court's Act praying this Hon'ble Court to commit and punish the Respondent for willfully disobeying and complying with the order of this Honble Court dated 05.01.2017 in M.P.(MD)No.3/15 in W.P.(MD). No.1241/2015.

**Prayer in MP(MD).No.3 of 2015 in WP(MD).No.1241 of 2015 :**

Writ Miscellaneous Petition is filed under Article 226 of the Constitution of India, praying this Court to direct the 1st and 2nd respondents / writ petitioners either to reinstate the petitioner / 2nd respondent in service or to pay him his monthly wages every month from the date of filing of the writ petition till the disposal of the same.

Prayer in WP(MD).No.1241 of 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the order dated 09.09.2014 passed by the 1st respondent in I.D. No. 90 of 2010 and quash the same.

Prayer in SUB.APLN(MD). No.257 of 2018 :-

Sub Application is filed under section 151 of Civil Procedure Code, praying this Hon'ble Court to dispense with the petitioner personal appearance on 30.11.2018 or on any subsequent date before this Hon'ble Court in Sub Application(MD).No.104 of 2018.

Prayer in SUB.APLN(MD). No.104 of 2018 :-

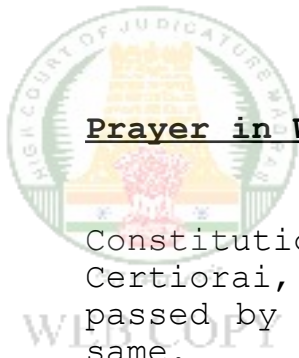
Sub Application is filed under section 151 of Civil Procedure Code, praying this Hon'ble Court to re-call the order dated 09.02.2018 closing the Cont P(MD).No.2365 of 2017 in MP(MD).No.3 of 2015 in WP(MD).No.1241 of 2015 and re - open the same on the file.

Prayer in CONT P(MD).No.2365 of 2017 :

Contempt petition is filed under section 11 of Contempt of Court's Act praying this Hon'ble Court to commit and punish the Respondent for willfully disobeying and complying with the order of this Honble Court dated 05.01.2017 in M.P.(MD)No.3/15 in W.P.(MD).No.1241/2015.

Prayer in MP(MD).No.3 of 2015 in WP(MD).No.1241 of 2015 :

Writ Miscellaneous Petition is filed under Article 226 of the Constitution of India, praying this Court to direct the 1st and 2nd respondents / writ petitioners either to reinstate the petitioner / 2nd respondent in service or to pay him his monthly wages every month from the date of filing of the writ petition till the disposal of the same.

**Prayer in WP(MD) .No.1241 of 2015 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the order dated 09.09.2014 passed by the 1st respondent in I.D. No. 90 of 2010 and quash the same.

ORDER:-

Sub Applications are coming on for hearing on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. S.ARUNACHALAM, Advocate for the Petitioner in SUB.APLN(MD). No.104 of 2018 and Advocate for the Respondent in SUB.APLN(MD). No.257 of 2018 and of Mr. K.SATHYA SINGH, Advocate for the Respondent in SUB.APLN(MD). No.104 of 2018 and Advocate for the Petitioner in SUB.APLN(MD). No.257 of 2018, this Court made the following order:

Sub Application (MD) No.104 of 2018 in Contempt Petition (MD) No.2365 of 2017 is filed by the workman to recall the order dated 09.02.2018 closing the contempt petition (MD) No.2365 of 2017 in M.P.(MD) No.3 of 2015 in W.P.(MD) No.1241 of 2015 and to reopen the same on file.

2. Sub Application (MD) No.257 of 2018 in Contempt Petition (MD) No.2365 of 2017 is filed by the General Manager, State Express Transport Corporation (Tamil Nadu) Limited, Chennai-2 to dispense with his personal appearance on 30.11.2018 or on any subsequent date before this Court in Sub.A.(MD) No.104 of 2018.

3. The contempt petition (MD) No.2365 of 2017 was filed by the workman to punish the respondent / General Manager for wilful disobedience and not complying with the orders of this Court, dated 05.01.2017 passed in M.P.(MD) No.3 of 2015 in W.P.(MD) No.1241 of 2015.

4. The above said contempt petition was filed for the non-implementation of the interim directions granted by this Court on 05.01.2017 in M.P.(MD) No.3 of 2015 in W.P.(MD) No.1241 of 2015. The said order is extracted hereunder:

"The award of the Labour Court ordering reinstatement of the 2nd respondent / workman is challenged in this writ petition.

2. Pending disposal of the writ petition, the workman filed M.P.(MD) No.3 of 2015, seeking direction to the petitioner corporation either to reinstate him or to pay monthly wages every month



from the date of filing of this writ petition to till the date of disposal.

3. Since the workman has the benefit of the order of dismissal being set aside, this Court directs the petitioner corporation to pay the last drawn wages to the 2nd respondent / workman every month from the date of this writ petition to till the disposal of the writ petition or till the workman attains the age of superannuation, whichever is earlier. The arrears upto December 2016 shall be paid on or before 01.03.2017 and the last drawn wages from January 2017 onwards shall be paid to the workman on or before 10th day of succeeding month.

M.P.(MD) No.3 of 2015 is disposed of accordingly."

5. The above interim order was passed pending disposal of the writ petition. The workman filed M.P.(MD) No.3 of 2015 in W.P.(MD) No.1241 of 2015 seeking direction to the writ petitioner / Transport Corporation either to reinstate him into service or to pay him monthly wages every month from the date of the writ petition till the date of disposal of the same, in compliance with Section 17-B of the Industrial Disputes Act, 1947.

6. The learned counsel appearing for the workman made a submission that the interim order passed by this Court was not complied with. Thus, the workman filed the contempt petition to punish the Management of the Transport Corporation. Relying on Paragraph No.3 of the interim order, the learned counsel for the workman contended that during the pendency of the cases, the workman was reinstated into service during January, 2018 and he is working as of now. However, the arrears of last pay drawn from January, 2017 onwards is to be paid as per the directions of this Court. Thus, the officials of the Transport Corporation are to be punished.

7. To substantiate the arguments, the learned counsel for the workman states that the Honourable Supreme Court emphasized the importance of complying with the provisions of Section 17-B of the Industrial Disputes Act, 1947 in the case of **Rajeshwar Mahto vs. Birla Corpn. Ltd.**, reported in **(2018) 4 SCC 341** and Paragraph No.19 of the said decision is extracted hereunder:

"19. In other words, even if the employer eventually succeeds in its appeal against his employee, in which such order was passed during the pendency of employer's appeal, the employer continues to remain under legal obligation to comply with such order passed by the Court under Section 17-B of the Act in favour of the employee. To put



it in short, an order passed under Section 17-B of Act does not merge with the final order passed in the appeal and being an independent order, it remains alive for enforcement."

8. In view of the fact that the respondent / Transport Corporation had not complied with Section 17-B of the Industrial Disputes Act, 1947, as directed in the interim order of this Court, they are liable to be punished.

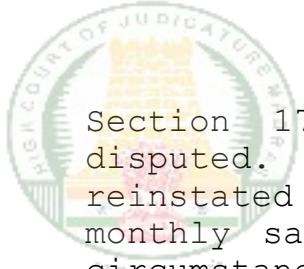
9. Both the workman as well as the Management of the Transport Corporation admitted the fact that the workman was reinstated into service on 17.01.2018 and he is serving in the Transport Corporation as of now and receiving monthly salary for the past more than 1 ½ years. The writ petition in W.P.(MD) No.1241 of 2015 is pending for adjudication.

10. The learned counsel for the workman insists for payment of arrears of last pay drawn.

11. The learned counsel for the respondent / Transport Corporation states that already the Transport Corporations across the State of Tamil Nadu are in financial crisis and struggling even to settle the terminal and pensionary benefits to the retired workmen. Large number of writ petitions were filed seeking directions to settle the terminal and retirement benefits of the workmen, who attained the age of superannuation in the Transport Corporations. Even these Transport Corporations are struggling to settle those benefits.

12. This being the factum, this Court cannot close its eyes in respect of the financial crisis prevailing in the Transport Corporations across the State of Tamil Nadu. The Government is releasing funds from time to time in order to meet out the expenditures for settling the terminal and pensionary benefits to the retired workmen. The Honourable Division Bench of this Court has also directed to the Transport Corporations to settle the terminal and pensionary benefits to the retired workmen at the earliest possible. Under these circumstances, the direction sought for to settle the arrears of last pay drawn to the workman herein may not be feasible, in view of the fact that he was already reinstated into service with effect from 17.01.2018 and is serving in the respondent / Transport Corporation and receiving the salary.

13. Undoubtedly, all these points are to be adjudicated. However, the contempt petition is filed against the interim order passed in the writ petition and in respect of **Rajeshwar Mahto's** case (cited supra) relied on by the learned counsel appearing for the workman, this Court is of the considered opinion that the legal obligation to comply with the order passed by the Court under



Section 17-B of the Industrial Disputes Act, 1947 cannot be disputed. However, in the present case on hand, the workman was reinstated into service on 17.01.2018 and now, he is working and monthly salary is being disbursed promptly to him. Under these circumstances, all other contentions raised by the parties to lis on hand shall be adjudicated at the time of final hearing of the writ petition. The claim of the workman as well as the grounds raised by the respondent / Transport Corporation shall be adjudicated during final hearing of the writ petition in order to arrive at a conclusion. This being the balanced approach to be adopted, this Court has no hesitation in coming to the conclusion that the contempt petition, at this juncture, may not be required nor the Management of the Transport Corporation can be punished for committing wilful disobedience of the orders of this Court as they had already reinstated the workman in service and is paying monthly salary promptly to him. The parties to the lis on hand are at liberty to adjudicate all the issues in the main writ petition.

14. Accordingly, the following orders are passed:

- (i) Sub Application (MD) No.104 of 2018 in Contempt Petition (MD) No.2365 of 2017 stands closed.
- (ii) In view of the order closing Sub Application (MD) No.104 of 2018, Sub Application (MD) No.257 of 2018 in Contempt Petition (MD) No.2365 of 2017 also stands closed.
- (iii) Registry is directed to list the writ petition in W.P.(MD) No.1241 of 2015 for final hearing after two weeks.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1 PONMUDI,
THE GENERAL MANAGER (ADMN) .,
HEAD OFFICE, TNSTC, PALLAVAN SALAI,
CHENNAI.

2 PONMUDI,
THE GENERAL MANAGER, SETC (TAMIL NADU) LTD.,
PALLAVAN SALAI, CHENNAI.

**Copy to:**

1. The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.

2. The Section Officer,
Judicail Section,
(Corresponding Seat)
Madurai Bench of Madras High Court,
Madurai.

(To list the WP(MD).No.1241/2015 for final
hearing after two weeks)

+1cc to Mr.K.Sathiya Singh, Advocate, SR.No. 82218

COMMON ORDER

IN

Sub.Apln.(MD) Nos.104 & 257 of 2018
in

Cont.P.(MD) No.2365 of 2017

16.08.2019

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JMN(26.08.2019) 7P : 6C