

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2021

CORAM :
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.5552 of 2021

R.Govindasamy

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
3/137, Salamedu,
Valuthareddy Post,
Villupuram - 605 602.
 2. The Administrator,
Tamil Nadu State Transport Corporation Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai,
Chennai 600 002.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records made in C.P.No.73 of 2019, dated 13.01.2020, the Award passed by the II Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr.V.S.Jagadeesan
For Respondents : Mr.C.S.K.Sathish

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the Award dated 13.01.2020 passed by the II Additional Labour Court, Chennai in C.P.No.73 of 2019.

2. According to the Petitioner, the Respondent Corporation has calculated the terminal benefits due to him based on his last drawn pay at Rs.12,950/- and paid the same through instalments on various dates, without carrying interest. He contended that, the Labour Court, while dealing with the Petition under Section 33C(2) of the Industrial Disputes Act, 1947, has not analyzed the terms and conditions of the Settlement marked as Ex.P2, which clearly states that, those who are on roll as permanent employees on and from 01.09.2013 are eligible to receive the settlement benefits as per the Terms of

Settlement dated 13.04.2015 with retrospective effect from 01.09.2013. He went on to contend that, the Labour Court ought to have seen that, after arriving at the last drawn salary, the Management has to pay the difference amount of wages for the period between the date of Settlement till his date of retirement, i.e. from 01.09.2013 till 30.06.2014.

3. For better appreciation, relevant portion of the Terms of the Settlement dated 13.04.2015, as could be seen in page No.11 of the Typed Set of Papers, is extracted below:

“தமிழ்நாடு அரசு போக்குவரத்துக் கழகங்களில் 31.08.2013 அன்று பணிபுரியும் நிரந்தர தொழிலாளர்களுக்கு (Permanent Employees as on 31.08.2013) கீழ்க்கண்டவாறு அடிப்படை ஊதியம் நிர்ணயம் செய்து 01.09.2013 முதல் வழங்கப்படும்.

31.08.2013 அன்று அவர்கள் பெற்று வந்த அடிப்படை ஊதியம் (Basic Pay) மற்றும் தர ஊதியத்தின் (Grade Pay) கூட்டுத் தொகையில் 5.5% கணக்கிட்டு (rounded off to Rs.10) அடிப்படை ஊதியத்தோடு சேர்த்து புதிய அடிப்படை ஊதியம் (Revised Basic Pay) கணக்கிட்டு 01.09.2013 முதல் நிர்ணயம் செய்து வழங்கப்படும். (Pay Band + Grade Pay -ல் எவ்வித மாற்றமும் இல்லை (இணைப்ப. னு).”

4. Clause 40 of the Terms of Settlement refers to the period of operation of the Settlement. The Petitioner herein has retired from service on 30.06.2014 on attaining the age of superannuation, after completing 23 years of service in the post of Selection Grade Senior Assistant. The Settlement was signed on 13.04.2015 after the retirement of the Petitioner. However, in terms of Clause 10 of the Settlement, terminal benefits due to the Petitioner have been disbursed to him, retrospectively.

5. The Labour Court, while computing the amount payable to the Petitioner, observed that, there is no dispute with regard to Basic Pay, Dearness Allowance and Grade Pay payable to the Petitioner and held that, as the Settlement dated 13.04.2015, marked as Ex.P2 is not retrospective, the Petitioner will not be entitled to any benefits.

6. Mr.C.S.K.Sathish, learned counsel appearing for the Respondent/Transport Corporation drew the attention of this Court to the claim made by the Petitioner that, pursuant to the revision in wages, his Basic Pay including Grade Pay has been fixed at Rs.13,990/-. According to him, the calculation made by the Petitioner is not correct and that, the matter will have to

be remanded for fresh computation and that, benefits if any, can be extended to the Petitioner, only after appropriate calculation. Learned counsel fairly submitted that, the Settlement has retrospective effect from 01.09.2013 and employees, who have retired from service are entitled to benefits not from the date of signing of the Settlement, but, on the date of giving effect to it.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. It is not in dispute that, the Settlement dated 13.04.2015 marked as Ex.P2 has retrospective effect from 01.09.2013 and the Petitioner retired from service on 30.06.2014. Clause 10 of the said Settlement fairly speaks about the retrospective effect, which means that, the benefits of the Settlement will have to be extended to the Petitioner from 01.09.2013. Even going by the calculation of interest by the Respondent/Corporation at paragraph 9 of the common counter Affidavit filed by them before the Labour Court, as could be seen in page 41 of the Typed Set of Papers, the computation of Basic Pay is only an arithmetical error. In terms of the Settlement, the Basic Pay of the Petitioner works out to Rs.13,800/- and not Rs.13,990/-. For better appreciation, S.No.4 of paragraph 9 of the common counter Affidavit filed by the Respondent/Transport Corporation before the Labour Court, is extracted hereunder:

S.No	Particulars	Amount	Date of Payment
4	Mode of computation of Gratuity (Basic + Grade Pay + DA * Qualifying Service * 15) / 26 (12950 + 2400 + 15350 x 23 x 15) / 26	4,07,365.00	23.05.2017 We have settled five months before the expiry of 12 th instalment

9. It is represented by the learned counsel for the Petitioner that, the Petitioner has agreed to accept the arithmetical error as regards computation of Basic Pay that, it shall go only as Rs.13,800/- instead of Rs.13,990/-. Hence, this Court is of the view that, the matter need not be remanded for fresh computation.

10. The order of the Labour Court holding that, the Settlement cannot be retrospective is not correct, when Ex.P2 - Terms of Settlement, speaks otherwise. Hence, the order dated 13.01.2020 passed by the Labour Court is set aside. The Respondent/Transport Corporation shall calculate the benefits

due to the Petitioner as per S.No.4 of paragraph 9 of the common counter Affidavit filed by them before the Labour Court, and disburse the difference in amount to the Petitioner together with interest at 4% per annum, from the date the amount became due, within a period of four months from the date of receipt of a copy of this order.

The Writ Petition is allowed on the above terms. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Managing Director,
Tamil Nadu State Transport Corporation (VPM) Ltd.,
3/137, Salamedu, Valuthareddy Post,
Villupuram - 605 602.
2. The Administrator,
Tamil Nadu State Transport Corporation Pension Fund Trust,
Thiruvalluvar House,
Pallavan Salai, Chennai 600 002.
3. The Presiding Officer,
1st Additional Labour Court,
Chennai.

+1cc to Mr.V.S.Jagadeesan, Advocate, S.R.No. 27727

+1cc to Mr.C.S.K.Sathish, Advocate, S.R.No. 27894

W.P.No.5552 of 2021

CP(CO)
GN(13/07/2021)

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