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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4550 of 2014

S.Muthukamatchi

... Petitioner

-vs-

1. The Presiding Officer
Labour Court,
Coimbatore.

2. The Management
Tamil Nadu State Transport Corporation
(Coimbatore) Limited
Mettupalayam Road,
Coimbatore.

... Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to C.P.No.1 of 2010 on the file of the 1st respondent and quash that portion of the order dated 11.01.2013 passed therein by which the 1st respondent has wrongly computed the length of service and quantum of basic wages and further direct the 1st respondent to pay the petitioner pension, based on total length of service from 03.09.1975 and also based on revised wages as per the settlement dated 01.09.2005.

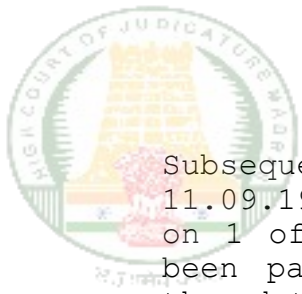
For Petitioner : M/s.K.V.Shanmuganathan

For Respondents : Mr.A.Sundaravathanam for R2

O R D E R

This writ petition has been filed, seeking to call for the records pertaining to C.P.No.01/2010 on the file of the 1st respondent and quash that portion of the order dated 11.01.2013 passed therein by which the 1st respondent has wrongly computed the length of service and quantum of basic wages and further direct the 1st respondent to pay the petitioner pension, based on total length of service from 03.09.1975 and also based on revised wages as per the settlement dated 01.09.2005.

2. The petitioner was disengaged from service, which resulted in an award dated 02.12.1993 in I.D.No.409 of 1989 and the award came to be published on 12.08.1994.



Subsequently, the employee was reinstated in service on 11.09.1994 and the employee has filed a Computation Petition on 1 of 2010, claiming benefits under various heads that has been paid except for the period between 02.12.1993, namely, the date of the award till 10.09.1994 namely the date of reinstatement. The Labour Court has rejected the relief for this period on the ground that the award has been published on 12.08.1994, which would come into effect within 30 days from the date of publication of the award and that the employee will not be entitled to the benefits.

3. Learned counsel for the Management contended that the amount for the period of one year is approximately Rs.5,00,000/-, out of which a sum of Rs.5400/- was already received by the Workman. The Workman already attained the age of superannuation on 31.01.2005 and his request for wages for 24 months after his retirement cannot be accepted. He further contended that in terms of the provision of Sections 17 and 17A of the I.D.Act, 1947 Act, the award will come into effect after 30 days of publication and therefore, the Labour Court has rightly rejected the relief for the period in question, warranting no interference by this Court.

4. Heard both sides. Perused records.

5. It is not in dispute that the Workman was reinstated in service on 11.09.1994, pursuant to the award dated 02.12.1993 in I.D.No. 405 of 1989 and the award was published on 12.08.1994. The Labour Court denied the computation of amount from the date of award, namely, 02.12.1993 till reinstatement of the Workman by the employer. This Court, at this moment, thinks it fit to extract the provisions of Sections 17 and 17-A of the I.D.Act, which read as follows:

"17. Publication of reports and awards.-

(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit.

(2) Subject to the provisions of section 17A, the award published under sub- section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.

17A. Commencement of the award -

(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17: Provided that -

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour



Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days.

(2) Where any declaration has been made in relation to an award under the proviso to sub-section (1), the appropriate Government or the Central Government may, within ninety days from the date of publication of the award under section 17, make an order rejecting or modifying the award, and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State, if the order has been made by a State Government, or before Parliament, if the order has been made by the Central Government.

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of a State or before Parliament, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid; and where no order under sub-section (2) is made in pursuance of a declaration under the proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section (2).

(4) Subject to the provisions of sub-section (1) and sub-section (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1) or sub-section (3), as the case may be."

6. A reading of the aforesaid provisions makes it very clear that the date on which the award was passed should be reckoned for the purpose of giving effect and it cannot at any stretch of imagination be said that that the Labour Court award can be automatically postponed in terms of the above provisions. Once the employee gets the benefit of the award, it should be given effect retrospectively, unless otherwise the benefits is extended prospectively.



7. It is pertinent to mention here that the duty of the Labour court is to compute the monetary amount in terms of the award and not to postpone the award from the future date, which is incorrect and illegal, as the employee or the employer cannot be blamed themselves for non publication of the award at the earliest. The provision deals with the date of coming into effect of the award, but, however all the monetary benefits will have to be extended from the date of the award or prior to, depending upon the relief that has been granted in the award. Hence, in my considered opinion, the finding of the Labour Court that the employee would not be entitled to the monetary benefits or any benefits from 02.12.1993 to 10.09.1994 is illegal and perverse, as it amount to review of the award of the Labour Court in the Computation Petition, which is impermissible.

8. At this juncture, learned counsel for the Petitioner stated that the Petitioner has agreed to confine his relief only to Rs.40,000/- in toto, apart from giving up the interest portion for the said sum due to pandemic situation, in order to give quietus to the matter.

9. In view of the above submission, this Writ Petition is ordered and the Management is directed to release the sum of Rs.40,000/- to the Workman, within a period of two months from the date of receipt of a copy of this order. However, it is made clear that the entire period of service from 02.12.1993 to 10.09.1994 shall be taken into account for all purposes. If the amount of Rs.40,000/- is not paid within two months, the Workman is entitled to interest @ 6% per annum from 11.09.1994 till the amount is actually paid. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

dpq

To:

1. The Presiding Officer
Labour Court,
Coimbatore.
2. The Branch Manager,
Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
Mettupalayam Road, Coimbatore.

W.P.No.4550 of 2014

PMK (CO)

<https://hcservices.courts.gov.in/hcservices/>
GMI (08/12/2021)