



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
11.06.2021	30.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.(MD) No.1000 of 2015
and
W.P.(MD) No.4641 of 2014
and
M.P.(MD) Nos.1 & 3 of 2014

W.A.(MD) No.1000 of 2015:

K.Palanivelu

... Appellant

-vs-

1.The Management of
Tamilnadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region
Rep.by its Managing Director
Bye Pass Road, Madurai

2.The Administrator
Tamil Nadu State Transport
Employees Pension Fund Trust
Thiruvalluvar Illam
Anna Salai, Chennai-2

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 06.02.2013, passed in W.P.(MD) No.761 of 2011, on the file of this Court.

Prayer in WP(MD). 761/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, after calling for the records from the 1st Respondent relating to the impugned order in Ref.Legal/WP.No.3787/08 dated 16-02-2010 quash the same and consequently direct the Respondents to pay Pension to the Petitioner under TNSTCEPF rules with arrears from 01-07-2006 with 12% interest, award cost.



For Appellant : Mr.S.Arunachalam

For Respondents : Mr.J.Senthil Kumaraiah

W.P. (MD) No.4641 of 2014:

The Management
(Pandiyam Transport Corporation)
now Tamil Nadu State Transport Corporation
(Madurai) Limited, Madurai Division
Bye-pass Road, Madurai-625 016 ... Petitioner

-vs-

1.The Presiding Officer
Labour Court, Madurai

2.K.Palanivelu ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records in C.P.No.2 of 2011, dated 07.08.2013, on the file of the first respondent and quash the same.

For Petitioner : Mr.J.Senthil Kumaraiah

For Respondents : R1 - Court
Mr.S.Arunachalam for R2

C O M M O N J U D G M E N T

T.S.SIVAGNANAM, J.

The appellant in the writ appeal is the second respondent in the writ petition.

2. For the sake of convenience, the parties shall be referred to as "the workman" and "the Management".

3. The workman filed W.P.(MD) No.761 of 2011 challenging the order, dated 16.02.2010, passed by the Management and to direct the Management to pay pension under TNSTCEPF Rules with 12% interest. The said writ petition was heard along with another connected matter and by a common order dated 06.02.2013, the same was dismissed. Challenging the correctness of the said order, the workman is before us by way of this writ appeal.



4. The workman filed C.P.No.2 of 2011, before the Labour Court, Madurai, to compute the wages and other monetary benefits payable to him, which was allowed by order dated 07.08.2013. The said order is impugned in the writ petition filed by the Management.

5. The facts, which are relevant for the disposal of the cases, are as under:

5.1. The workman joined the services of the Management as a Conductor on 09.07.1973 and on 08.07.1974, he was terminated from service. The workman raised an industrial dispute, however, the Government declined to refer the dispute for adjudication before the Labour Court. The workman filed W.P.No.9292 of 1983 praying for a direction to the Government to refer the dispute of non-employment for adjudication. On 14.03.1988, the Government referred the dispute for adjudication to the Labour Court, Madurai, which was taken on file as I.D.No.63 of 1988 and by Award dated 17.02.1992, the workman was directed to be reinstated with continuity of service with 50% backwages. The Management did not reinstate the workman, but from April, 1993 started to pay wages under Section 17-B of the Industrial Disputes Act (in short, "I.D.Act") in terms of the interim orders granted in W.P.No.16634 of 1992 filed by the Management challenging the award of the Labour Court. By order dated, 23.08.2000, the writ petition was partly allowed and the award was modified by deleting the payment of 50% of backwages, while confirming the order of reinstatement with continuity of service.

5.2. The Management, by letter dated 07.10.2000, directed the workman to appear before the Assistant Manager (Administration). The workman would contend that though he was willing to join duty, the Management refused to permit him to do so. On the contrary, the Management continued to pay wages under Section 17-B of I.D.Act till February, 2003 though the writ petition filed by the Management was disposed of on 23.08.2000 confirming the award of reinstatement with continuity of service. On 15.06.2006, the workman attained the age of superannuation. The workman requested for payment of appropriate pension and since the representation was not considered, the workman filed W.P.(MD) No.3787 of 2008, wherein a direction was issued by order dated 26.02.2009 to the Management to settle the entire dues payable to the workman. By order dated 16.02.2010, the Management declined to give terminal benefits, including pension, which was challenged by the workman in W.P.(MD) No.761 of



5.3. Earlier, the workman filed C.P.No.2 of 2011 for computation of wages and other benefits payable to him. The said petition was allowed by the Labour Court, which is impugned in the writ petition filed by the Management and the workman aggrieved by the order, dated 06.02.2013, passed in W.P.(MD) No.761 of 2011, is before us by filing the writ appeal.

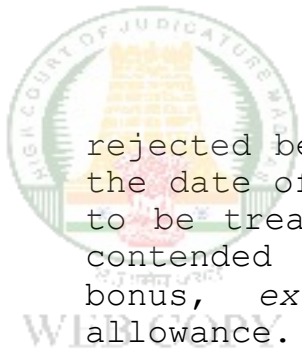
6. We have heard Mr.S.Arunachalam, learned counsel appearing for the workman and Mr.J.Senthil Kumaraiah, learned counsel appearing for the Management.

7. The learned Writ Court had dismissed the writ petition, primarily on the ground that the workman has already filed a petition in C.P.No.2 of 2011, before the Labour Court, Madurai, for computation of monetary benefits payable to him. Therefore, the question to be decided in the writ appeal is whether the workman is entitled for payment of wages from the date of the award, namely, 17.02.1992 till his date of superannuation i.e.30.06.2006. So far as the period from 08.07.1974 till the date of award, namely, 17.02.1992, the workman is not entitled for any wages as backwages have been denied and the award of the Labour Court granting 50% of backwages was set aside by this Court vide order dated 23.08.2000 in W.P.No.16634 of 1992. The Labour Court set aside the order of termination and directed reinstatement of the workman with continuity of service and 50% of backwages. The learned Writ Court confirmed the award of the Tribunal insofar as the relief of reinstatement and continuity of service, but denied backwages. The award of the Labour Court had become final as the Management did not challenge the award.

8. The workman would contend that soon after the award of the Labour Court, the workman had reported for duty, however, he was not permitted to join duty. Further, the workman would contend that the Management though found him to be medically fit by assessment of the Management's Doctor to discharge the function as Conductor, did not reinstate him, however, the Management filed W.P.No.16634 of 1992 challenging the award of the Labour Court and based on the interim directions issued in the said writ petition, wages under Section 17-B of the I.D.Act were paid to the workman from April, 1993. As noticed above, W.P.No.16634 of 1992 was disposed of by order dated 23.08.2000 confirming the award of the Labour Court directing reinstatement with continuity of service. Even thereafter, the Management did not reinstate the workman, but continued to pay wages under Section 17-B of I.D.Act till February, 2003. Thus, it is evidently clear that the Management was not willing to reinstate the workman, though an award of reinstatement with continuity of service was passed by the Labour Court as early



9. The Management challenged the award by filing a writ petition in the year 1992, which was pending till August, 2000, when it was partly allowed by setting aside the award of 50% of backwages alone. Even thereafter, for nearly three years, the Management continued to pay wages under Section 17-B of I.D.Act. The Management would contend before us that on several occasions, the workman was put on notice to join duty, however, the workman did not join duty and in this regard, referred to the letters dated 07.10.2000, 06.11.2000 and 05.04.2001. The workman would state that he was always ready and willing to join, but the Management did not permit him to join duty, though he was declared to be medically fit by the Doctor nominated by the Management. We cannot decide this controversy based on the affidavits filed before this Court, but we can take a decision based on as to how the Management dealt with the workman and how they understood the legal position to be. The Management cannot deny the fact that the Labour Court passed an award of reinstatement with continuity of service on 17.02.1992. During the pendency of the writ petition filed by them, pursuant to the interim directions issued, wages under Section 17-B of I.D.Act were paid to the workman from April, 1993. The writ petition was disposed of on 23.08.2000 confirming the award of reinstatement with continuity of service. Therefore, two options were available to the Management, one was to reinstate the workman with continuity of service immediately after passing of the order in the writ petition or to challenge the order passed in the writ petition by filing a writ appeal. Admittedly, no writ appeal has been filed though it appears that the workman was informed by the Management that they are in the process of filing a writ appeal. However, the most crucial conduct of the Management to be noted is that even after disposal of the writ petition on 23.08.2000, the Management continued to pay wages under Section 17-B of I.D.Act. Thus, this Court can infer that the Management was not willing to reinstate the workman, but was willing to pay wages as computed under Section 17-B of I.D.Act. This could have been done because the award of the Labour Court is one of reinstatement with continuity of service. Therefore, the wages have to be computed by considering the full length of service of the workman and not confined to the last drawn wages on the date of termination. However, abruptly, after February 2003, the wages under Section 17-B of I.D.Act was stopped and the Management fixed 15.06.2006 as the age of superannuation of the workman. There is no reason forthcoming from the Management as to why the wages under Section 17-B of I.D.Act was abruptly stopped from March, 2003 and as to why the Management determined the date of superannuation as 15.06.2006 and not as 30.06.2006. All these lead to the workman once again approaching the Labour Court for computation of the wages payable and the Labour Court, by order dated 07.08.2013, has computed the wages payable to the workman. The only ground on which the Management has challenged the order in C.P.No.2 of 2011 is by contending that the claim should have been



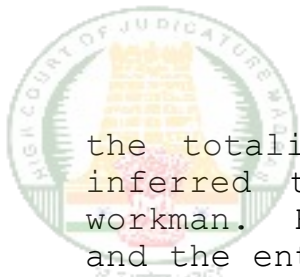
rejected because the workman was not on duty and the period between the date of dismissal and date of coming into force of the award has to be treated as period of leave on loss of pay. Further, it is contended that the workman has no right to claim any increment, bonus, *ex gratia* and also attendance incentive and washing allowance.

10. The learned counsel appearing for the workman submitted that the workman is ready and willing to give up his claim for washing allowance and will also file an affidavit before the Management and prays that pension may be sanctioned to the workman by taking note of the length of service rendered by him.

11. The Management had filed counter affidavit in W.P.(MD) No.761 of 2011 and while answering to the workman's averments about payment of wages under Section 17-B of I.D.Act, the Management would contend that due to oversight, excess amount was paid under Section 17-B of I.D.Act from 23.08.2000. This explanation cannot be accepted as the facts clearly show that the Management was not inclined to implement the award of reinstatement with continuity of service and with a view to keep the workman from not attending duty, wages under Section 17-B of I.D.Act were continued to be paid for nearly three years even after the disposal of the writ petition filed by the Management confirming the award of reinstatement with continuity of service. As mentioned earlier, there is no justifiable reason given by the Management for abruptly stoppping the payment of Section 17-B wages from March, 2003.

12. In any event, the award of the Labour Court granting reinstatement with continuity of service having become final, the workman is entitled to be reinstated with continuity of service and consequently, all benefits should be computed by taking note of full length of service and the pension to be accordingly fixed. However, the workman is not entitled to any backwages for the period from 1974 to 1992 as the award of 50% backwages was set aside by the learned Writ Court and the workman had not challenged that portion of the award. The order, which was impugned in the writ petition filed by the workman, dated 16.02.2010, is an outcome of wrong understanding of facts and misconception. The Management has glossed over the important portion of the relief granted by the Labour Court i.e.the relief of continuity of service while ordering reinstatement. This order having attained finality, the Management cannot escape from the rigor of such order nor they can contend that the workman has to be treated as a fresh entrant. Furthermore, the Management would not be justified in alleging that the workman did not report for duty in spite of three communications sent by the Management. If such was the true state of affairs, nothing prevented the Management from initiating fresh disciplinary action against the workman, which they did not do. On the contrary, they

<https://hccsecrecy.gov.in/hccsecrecy/> wages under Section 17-B of I.D.Act and considering



the totality of the facts and circumstances, it can be clearly inferred that the Management was not willing to reinstate the workman. Hence, the workman is entitled to be reinstated notionally and the entire length of service should be reckoned and his pay and allowance shall be fixed at the appropriate stages and consequently, the pension shall also be properly fixed and to be paid.

13. Thus, the only issue, which would remain, is the computation of the monetary benefits payable to the workman. This task has become easier as the Labour Court in C.P.No.2 of 2011, by order dated 07.08.2013, has computed the monetary entitlement of the workman. This order is put to challenge by the Management on the only ground that the workman did not report for duty. This argument has been rejected by us and we have held that the conduct of the Management was clear inasmuch as they were not willing to reinstate the workman. Therefore, the ground, on which the order of Labour Court in C.P.No.2 of 2011 has been challenged, has to necessarily fail. We find that there is no challenge to the order passed by the Labour Court in C.P.No.2 of 2011 questioning the quantum that has been computed, because both the Management and the workman had accepted the calculation, which was submitted before the Labour Court, which has been specifically recorded by the Labour Court in Paragraph No.22 of the order dated 07.08.2013.

14. The learned counsel appearing for the workman has placed reliance on the decision of the Honourable Supreme Court in the case of ***Vinod Ravjibhai Rajput vs. State of Gujarat and others [2020-II-LLJ-71 (SC)]***. In the said case, the award of reinstatement without backwages was confirmed and the Management gave fresh appointment to the workman, which was held to be not sustainable, as in the case on hand the workman was directed to be reinstated with continuity of service.

15. Thus, for all the above reasons,

- (i) W.A.(MD) No.1000 of 2015 is allowed and the order dated 06.02.2013, passed in W.P.(MD) No.761 of 2011, is set aside. Consequently, the order impugned in the writ petition, dated 16.02.2010, is quashed and the Management is directed to grant pension to the workman in the light of the award of reinstatement and continuity of service. However, the prayer for grant of interest on the arrears payable is rejected.
- (ii) W.P.(MD) No.4641 of 2014 is dismissed confirming the order, dated 07.08.2013, passed in C.P.No.2 of 2011, by the Labour Court, Madurai and the wages computed shall be paid.
- (iii) Needless to state that the workman is entitled for wages for the period from 17.02.1992



WEB COPY

W.A.(MD) No.1000 of 2015
and W.P.(MD) No.4641 of 2014

to 30.06.2006, after deducting the wages paid under Section 17-B of I.D.Act and consequently, other terminal benefits, including pension.

- (iv) The above direction shall be complied with by the Management, within a period of three months from the date of receipt of a copy of this Judgment.
- (v) No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

- 1.The Presiding Officer
Labour Court, Madurai.
- 2.The Management of
Tamilnadu State Transport
Corporation (Madurai) Ltd.,
Madurai Region
Rep.by its Managing Director
Bye Pass Road, Madurai
- 3.The Administrator
Tamil Nadu State Transport
Employees Pension Fund Trust
Thiruvalluvar Illam
Anna Salai, Chennai-2

COMMON JUDGMENT

IN W.A. (MD) No.1000 of 2015
and W.P. (MD) No.4641 of 2014
and M.P. (MD) Nos.1 & 3 of 2014

30.06.2021

PK(CO)

TR(07.07.2021) 8P 4C