



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:07.04.2022

CORAM:

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THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.6412 of 2022 and
WMP (MD) No.4995 of 2022

A.Pitchaiah

... Petitioner

Vs.

- 1.The Managing Director,
Tamilnadu State Transport Corpn. (MDU) Ltd.,
Bye-Pass Road,
Madurai.
- 2.The Financial Advisor,
Tamilnadu State Transport Corpn., (MDU) Ltd.,
Bye-Pass Road,
Madurai 16
- 3.The General Manager,
Tamilnadu State Transport Corpn. (MDU) Ltd.,
Bye-Pass Road
Madurai Region,
Madurai 16
- 4.The General Manager,
Tamilnadu State Transport Corpn. (MDU) Ltd.,
Virudhunagar Region, Bye-Pass Road,
Virudhunagar
- 5.The Administrator
TNSTC Employees Pensions Fund Trust,
SETC (TN) Ltd., No.2 Pallavan Salai
Chennai 2

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records from the 1st respondent pertaining to the impugned order passed in Ref.No.MDU/Legal/W.P.No.1514/2017 dated 23.08.2019 quash the same and consequently directing the respondents 1 to 4 to implement the High Court orders and also consequently direct the above respondents to implement the resolution passed in the 223rd Board Meeting, also the Office Note approved by the Management and further, the 3rd respondent's legal department (Writs) letter in ref. Legal/W.P.No.18300 of 2001 dated 05.04.2012., viz.,

<https://hcservices.ecourts.gov.in/hcservices/>



1.To implement and sanction the annual increments in every years from the dismissal date to the reinstatement date.

2.To implement and sanction to pay the review benefits and 10 years weightage increments in the whole service period and etc., properly.

3.To change the pay revision from old basic pay to the new basic pay in terms of pay revision in terms of Wage Settlement under Sub-Section 12(3) of the I.D. Act with attendant benefits with retrospective from 23.12.1994 to July 2005 to the petitioner.

4.To direct the respondents to revise the terminal benefits namely gratuity, earned leave salary, commuted value of pension and monthly pension based on the pay revision given and settlement from the date of his retirement to till the date of actual payment and disburse the difference amounts for the same to him together with interest at the rate of 6% per annum payable within the stipulated time limit that may be fixed by this Court.

For Petitioner : Mr.K.Gokul
For Respondents : Mr.J.Senthil Kumaraish
Standing Counsel

ORDER

The order passed by the respondent Transport Corporation in proceedings dated 23.08.2019 informing him about his eligibility for gratuity and pensionary benefits is under challenge in the present writ petition.

2.The petitioner was appointed as Driver in the respondent transport corporation and retired from service on 31.05.2011 on attaining the age of superannuation.

3.The writ petitioner was dismissed from service due to an accident made by him against the private bus on 23.12.1994. Challenging the order of dismissal, the petitioner raised an industrial dispute before the labour Court and labour Court passed an award in I.D.No.189/1995 in favour of the writ petitioner for reinstatement. The petitioner was reinstated into service and thereafter allowed to retire from service.

4. The learned counsel for the petitioner reiterated that the terminal and pensionary benefits due to the petitioner has not been settled fully. However, it was settled partially. The writ petitioner earlier filed W.P.(MD) No.1514/2017 and this Court passed an order to consider the representation and based on the orders of this Court dated 19.03.2019, the present impugned order



5. Perusal of the impugned order reveals that service particulars of the petitioner has been taken into consideration and accordingly, the eligible gratuity amount and other pensionary benefits are settled in favour of the writ petitioner.

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6. The learned counsel for the petitioner raised an objection that the calculation made by the respondent corporation is incorrect. The petitioner has given a calculation and as per the calculation of the petitioner, the amounts are to be settled.

7. This Court is of the considered opinion that it is a disputed facts between the parties. What exactly the correct amount of terminal and pensionary benefits to be settled to an employee is to be decided with reference to the service records and other particulars, as the petitioner was dismissed from service and reinstated pursuant to the award of the labour Court.

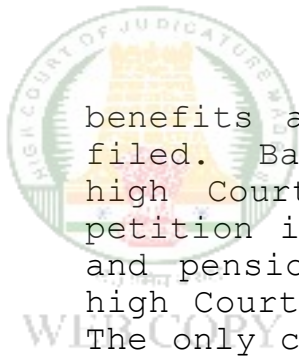
8. Such disputed facts cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. It requires examination of documents in original and further verification of service records are warranted. Power of judicial review cannot be extended for the purpose of adjudication to such disputed issues in writ proceedings. This exactly is the reason why the high Court is expecting the litigants to approach the competent authorities and the competent forum constituted for such adjudication.

9. Several statutes or rules contemplate provision for appeal, revision and review etc. Such alternate remedy is to be exhausted and it is paramount importance in the sense that the disputed issues between the parties requires an elaborate adjudication with reference to the documents and evidences.

10. Therefore, exhausting the alternate remedy is the rule, entertaining a writ petition is an exception. In all circumstances, the aggrieved person has to exhaust the alternate remedy contemplated under the Act, Rules or otherwise. Only on exceptional circumstances, where there is a gross injustice or if any damage which cannot be rectified, then alone high Court would dispense with the alternate remedy and entertain a writ petition.

11. The practice prevailing amongst the litigants directly approaching the high Court with a prayer to direct the respondents to pay the entire pensionary and service benefits need not be encouraged. The litigants are calculating their terminal and pensionary benefits in their own ways. When the respondents appear they say that they have settled as per the service records and as per the pay rules in force or in alternate writ petitions are disposed of to consider the representation of the petitioner.

<https://hccourts.gov.in/hccourts> Respondents are fixing the same terminal and pensionary

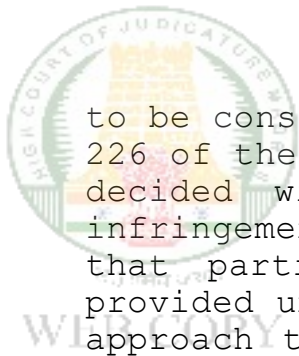


benefits and communicate an order and contempt petition is also filed. Based on the said order, pursuant to the directions by the high Court to consider the representation, again another writ petition is filed with the same prayer to dispose of the terminal and pensionary benefits. Again the question arises whether the high Court can compute the exact terminal and pensionary benefits. The only change made in the second writ petition would be that the order passed pursuant to the directions to consider the representation is challenged in addition and nothing further.

12.Unfortunately the litigants are driven to Court again and again for redressing the very same grievances. In the present case, the only grievance of the writ petitioner is that the terminal and pensionary benefits are not settled fully as per the claim of the petitioner. However, as per the respondents, the pensionary and terminal benefits were already settled and an order to that effect has also been passed.

13.This Court is of the considered opinion that the litigants cannot be made to suffer by way of multiplicity of proceedings. The justice delivery system should thrive hard to ensure that the aggrieved persons get speedy justice and their genuine grievances are redressed in accordance with law. Contrarily, if they were driven to Court repeatedly and finally their grievances are not addressed or redressed then the faith in the justice delivery system is in peril and therefore, the Courts are expected to be cautious in dealing with the multiplicity of proceedings and the possibility of creating multiplicity of proceedings and to ensure that the issues are decided on merits at the first instance itself. Once the issues are decided and the rights of the parties are crystallized, then all appropriate reliefs can be granted even in a writ petition filed for a direction to consider the representation. Courts are empowered to adjudicate the issues and if necessary mold the prayer and grant appropriate relief to redress the grievances. Contrarily, issuing a direction to consider a representation may be an easy way out for disposal of the case. But it will not do any service to the cause of justice. The litigants are driven again back to the Court by way of further litigations and it may take several long years and ultimately the faith and trust in the system will be shakened and the high Court cannot allow such impressions to go on in the public domain.

14. This Court is witnessing many number of such writ petitions and many number of litigants are unable to redress their grievances even after filing two or three writ petitions and contempt petition. Such a situation can never be allowed to continue and the issues are expected to be decided on merits and in accordance with law by crystallizing the rights of the parties. In the event of not establishing right then the writ petition is not entertainable. Again maintainability of the writ petition need not be ascertained. However entertainability is the question which is



to be considered. All writ petitions are maintainable under Article 226 of the Constitution of India, however entertainability is to be decided with reference to the rights of the parties or its infringement. Therefore, this Court is of the considered opinion that parties must be allowed to exhaust the alternate remedy provided under the statutes and in the service rules and thereafter approach the Court, if they are further aggrieved and the Courts are expected to adjudicate the issues on merits and settle the issues for the purpose of providing complete justice to the parties approaching the Court. This being the principles, which all are settled by the Hon'ble Supreme Court of India on several occasions, this Court is of an opinion that the practice of entertaining a writ petition without exhausting the alternate remedy needs to be discouraged and cannot be encouraged.

15. In the present case, the petitioner rightly approached the labour Court challenging the order of dismissal. An award was passed in favour of the writ petitioner and accordingly he was reinstated and allowed to retire from service. Now towards disputing the terminal benefits, which were settled pursuant to the award and by fixing the pay of the writ petitioner, if at all there is any dispute in pay fixation pursuant to the labour Court award or otherwise, then the petitioner has to approach the competent labour Court for computation of the benefits or for any other appropriate relief, as the case may be. If at all the grievance of the petitioner is not redressed by the labour Court, thereafter they are at liberty to approach the high Court under Article 226 of the Constitution of India. In the event of such approach, the factual findings of the labour Court with reference to the documents and evidences would be of greater assistance to the high Court for the purpose of taking a decision by exercise of powers of judicial review under Article 226 of the Constitution of India. Thus, the factual findings of the labour Court in such circumstances undoubtedly would of greater assistance for taking an appropriate decision.

16. The power of judicial review under Article 226 of the Constitution of India is to ensure the processes through which the decision is taken by the competent authorities in consonance with the statutes and rules in force, but in a decision itself. This being the scope under the Constitution, the high Court need not venture into an adjudication of the disputed facts between the parties, at all circumstances.

17. In view of the above principles, this Court is of the considered opinion that the petitioner being a workman and retired from service, the service conditions were governed under 12(3) settlement and after retirement under the pension scheme and therefore, he is at liberty to approach the labour Court for appropriate relief to redress his grievance in the manner known to



18. With this liberty, the writ petition stands disposed of.
No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

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