



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.01.2022**

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. (MD) .No.9534 of 2018

R.Narayanan

... Petitioner

vs.

1.The Tamil Nadu State Transport Corporation(Kumbakonam) Limited,
represented by its Managing Director,
Kumbakonam.

2.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Trichy Region, Trichy.

3.The Administrator,
Tamil Nadu State Transport Corporation Pension Fund Trust,
Thiruvalluvar House, Pallavan Salai,
Chennai 600 002.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to sanction and pay the petitioner's pension, commuted value of pension, gratuity, provident fund contribution and all other attendant retiral benefits within a time limit that may be fixed by this Court.

For Petitioner	: Mr.Ajay Khose for Mr.A.Rahul
For R1 & R2	: Mr.D.Sivaraman, Standing counsel
For R3	: Mrs.D.Anbarasi, Standing counsel

O R D E R

Heard Mr.Ajay Khose for Mr.A.Rahul, learned counsel for the petitioner, Mr.D.Sivaraman, learned Standing counsel for R1 and R2 and Mrs.D.Anbarasi, learned Standing counsel for R3.

2.The petitioner has sought a Mandamus directing the respondents, specifically R3, to sanction and pay pension, commuted value of pension, gratuity, provident fund contribution and other retiral benefits, within a time frame to be fixed by this Court.

3.This direction is sought on the strength of an award passed by the Labour Court in I.D.No.135 of 2001, dated 21.08.2006.

4.Learned counsel for the respondents does not dispute the entitlement of the petitioner to all the reliefs sought for in the prayer barring pension and commuted value of pension. Thus, without

<https://hccse.courts.gov.in/hccse/Services/Services.aspx>



contribution and other retirement benefits within a period of six weeks from today.

5. Coming to the question of pension and commuted value thereof, the petitioner would rely upon the conclusion of the Labour Court, wherein the original order of termination dated 04.01.1999 was modified to one of discharge with all retirement/terminal benefits being ordered to be paid over to the petitioner.

6. Learned counsel for the respondents however would point out the alleged flaw in that aforesaid direction. They do not, and cannot dispute the position that the Labour Court has indeed modified the order of dismissal into one of discharge.

7. However, they rely upon the Standing Orders issued for the employees of the Cholan Roadways Corporation Limited, Kumbakonam, in terms of the Industrial Employment (Standing Orders) Act, 1946, specifically, Clause 25 thereof, which enumerates various punishments to be imposed for misconduct.

8. The relevant Clause reads as follows:

"25. Punishment for misconduct:-

1. The following shall be the prescribed punishment that may be awarded to workman, guilty of misconduct.

i) Censure

ii) Fine subject to the provisions of Payment of Wages Act.

iii) Stoppage of increments: Stoppage of increments with or without cumulative effect.

iv) a) Recovery from wages whole or part of any pecuniary loss, caused to the Corporation by the negligence or breach of orders of the workman.

b) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increment ordered to be withheld, where such an order cannot be given effect to.

c) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in a time scale ordered where such an order cannot be given effect to.

I submit that as per standing order

v) Suspension not exceeding 30 days

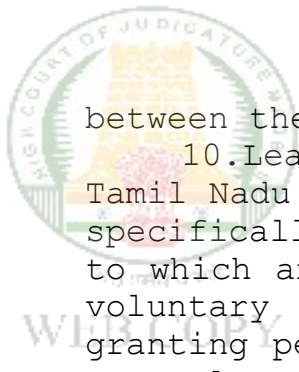
vi) Demotion to lower post or lower grades.

vii) Compulsory retirement

viii) Removal from service or discharge

ix) Dismissal from service"

9. The distinction between an order of 'dismissal', which is the last Clause and 'removal from service or discharge', which is the penultimate Clause, is that while dismissal carries with which the stigma of having been ousted from service, removal from service/discharge only means removal simpliciter, without the stigma associated with dismissal. This appears to be an accepted distinction



between the two classes of punishments.

10.Learned counsel for the respondents draws attention to the Tamil Nadu State Transport Corporation Employees' Pension Fund Rules, specifically Rules 16 and 21. Rule 16 deals with the kinds of pension to which an employee is entitled to, being superannuation pension or voluntary retirement pension. They would argue that Rule 21, while granting pensionary benefits, excludes the grant of such benefits to an employee, who is removed or dismissed from service.

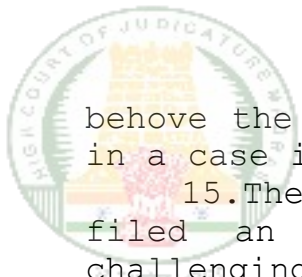
11.In substance, their argument is that if an employee has been either removed, discharged or dismissed from service, he loses the benefit of pension. That may well be so. However, in the present case, the Labour Court thought it fit, while modifying the order of termination to one of discharge, award pensionary benefits along with all other retirement benefits.

12.The Industrial Disputes Act, 1947, (in short 'Act') in Chapter 4, sets out the procedure, powers and duties of authorities and in terms of Section 11A of the Act, vests wide power to award appropriate relief in cases of discharge or dismissal of workman. The provision reads thus:

"11A.Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

13.The Labour Court is the final fact finding authority and there is no authority higher in hierarchy constituted under the statutory scheme. Any challenge to an order of the Labour Court would have to be only by way of writ Petition under Article 226 of the Constitution of India.

14.In the present case, the award of the Labour Court relied upon by the petitioner has attained finality and thus, it does not



behave the respondents to attempt to rewrite the award, particularly in a case instituted by the employee.

15.The respondents would submit that the petitioner had in fact filed an earlier writ petition in W.P.(MD).No.10228 of 2010 challenging the aforesaid award, which had been dismissed as withdrawn, by order dated 07.09.2016. This argument does not advance their case.

16.That challenge by the petitioner was on the merits of the award itself and for certain conclusions in the award which the petitioner believed, were detrimental to him. The fact that the writ petition was filed or withdrawn has, in my considered view, no bearing on the prayer sought for in this case.

17.The argument of the respondents to the effect that this writ petition would tantamount to this Court permitting an erroneous direction of the Tribunal to be implemented is also not liable to be accepted for the reason that the direction of the Tribunal is one that has been issued in terms of the wide power granted to it under Section 11(A) of the Act. If at all the respondents were aggrieved by the order, it was for them to have challenged it and sought modification which they have not chosen to do.

18.Rule 55 of the Tamil Nadu Industrial Disputes Act provides for the correction of errors in an order passed by the Labour Court, either an omission or a clerical mistake or an error in the proceedings. If at all the respondents were of the view that the direction for pension was contrary to law and constituted an error liable to be corrected by the Tribunal or one that ought to have challenged by way of writ petition, then the respondents ought to have taken recourse to such remedial action and not allowed the award to become final.

19.The respondents are fully bound to give effect to the directions of the Tribunal as R3, State Transport Corporation provident Fund Trust is fully bound by the order passed by the Labour Court. Thus, in light of the discussion aforesaid, the Mandamus as sought by the petitioner qua pension and commutation of pension is also accepted and a direction is issued for computation and pay over of the same, within a period of eight weeks from today. This Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



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

To

- 1.The Managing Director,
Tamil Nadu State Transport Corporation(Kumbakonam) Limited,
Kumbakonam.
- 2.The General Manager,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Trichy Region, Trichy.
- 3.The Administrator,
Tamil Nadu State Transport Corporation Pension Fund Trust,
Thiruvalluvar House, Pallavan Salai,
Chennai 600 002.

+1 CC to M/s.A.RAHUL, Advocate (SR-77[F] dated 04/01/2022)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-144[F] dated 04/01/2022)

W.P. (MD) No.9534 of 2018
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RS (31.01.2022) 5P-6C