



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 29.04.2022**

**PRONOUNCED ON : 14.06.2022**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

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**W.P(MD)No.11608 of 2018**

**and**

**W.M.P. (MD)Nos.10576 and 10577 of 2018**

R.Ramesh

... Petitioner

**Vs.**

1.The Managing Director,  
Tamil Nadu State Transport Corporation (Madurai) Ltd.,  
Bye Pass Road,  
Madurai.

2.The General Manager,  
Tamil Nadu State Transport Corporation (Madurai) Ltd.,  
Madurai Region,  
Madurai.

3.The Assistant Manager,  
(Personnel and Administration Department),  
Tamil Nadu State Transport Corporation (Madurai) Ltd.,  
Madurai Region,  
Madurai.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring the action of the respondents in reducing the salary of the petitioner from Rs.28,180/- to 21,678.20/- with effect from January 2018 and the impugned order passed by the third respondent in Ref.Estt/E4/121 dated 22.05.2018 imposing recovery of Rs.2,19,175/- from the salary of the petitioner as illegal, null and void and consequently direct the respondents to continue to disburse salary to the petitioner from January 2018 by taking into account the pay revision granted in settlements under Section 12(3) of I.D.Act dated 01.09.2003, 01.09.2007 and 01.09.2010 and subsequent settlements entered once in 3 years between the trade unions and the 1st respondent management.

For Petitioner : Mr. A.Rahul

For Respondents : Mr.J.Senthil Kumaraiah  
Standing Counsel



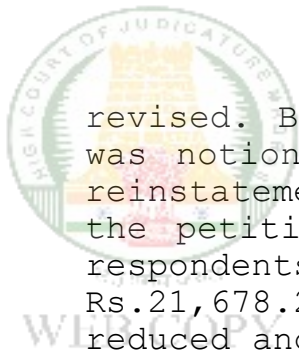
**ORDER**

This Writ Petition is filed for declaration, declaring the action of the respondents in reducing the salary of the petitioner from Rs.28,180/- to 21,678.20/- with effect from January 2018 and the impugned order passed by the third respondent in Ref.Estt/E4/121 dated 22.05.2018, imposing recovery of Rs.2,19,175/- from the salary of the petitioner, as illegal, null and void and consequently direct the respondents to continue to disburse salary to the petitioner from January 2018, by taking into account the pay revision granted in settlements under Section 12(3) of I.D.Act dated 01.09.2003, 01.09.2007 and 01.09.2010 and subsequent settlements entered once in 3 years between the Trade Unions and the 1st respondent management.

2. The petitioner joined the second respondent corporation as Conductor with effect from 01.04.1992 and completed 11 years of service. The petitioner was dismissed from service on 11.06.2003, on the ground that the petitioner absented from duty without prior permission. The petitioner preferred an appeal to the Managing Director on 07.08.2003. The respondent corporation simultaneously filed approval petition before the Special Deputy Commissioner of Labour, Chennai under Section 33(2)(b) of the Industrial Disputes Act, seeking to grant approval for the dismissal order. The approval was granted on 09.01.2006. The petitioner submitted representation to the first respondent on 13.08.2009 seeking reinstatement. Thereafter, the petitioner preferred W.P. (MD)No.8663 of 2009 and this Court vide order dated 01.09.2009, directed the Managing Director, to consider the petitioner's representation for reinstatement. The first respondent corporation came forward to reinstate the petitioner as fresh entrant from 16.05.2011 without continuity and without back wages from 11.06.2003. Aggrieved over the same, the petitioner raised an Industrial Dispute before the Assistant Commissioner of Labour, Madurai in I.D.No.111 of 2012 was filed.

3. The Labour Court by award dated 29.01.2014, directed the respondent corporation to reinstate the petitioner within three months of the award with continuity of service excluding the period between 12.06.2003 and 29.11.2011 and without backwages. The petitioner was sent for Medical Examination to ascertain the petitioner's fitness on 28.08.2014 and was reinstated to the service with continuity of service with effect from 04.09.2014. The period from 12.06.2003 to 29.11.2011 was excluded for payment of back wages since there was a delay on the part of the petitioner in raising Industrial Dispute. The petitioner joined duty as Conductor.

4. The contention of the petitioner is that the period between from 12.06.2003 to 29.11.2011, three settlements were entered under Section 12(3) of the Industrial Disputes Act, between the trade unions and the first respondent management on 01.09.2003, 01.09.2007 and 01.09.2010 by which the pay of the transport workers was



revised. Based on the said three settlements, the petitioner's pay was notionally revised from the date of dismissal to the date of reinstatement and the petitioner was getting a sum of Rs.28,180/- as the petitioner's salary in the month of December, 2017. But the respondents reduced the petitioner's pay from Rs.28,180/- to Rs.21,678.20/- from January, 2018, i.e., a sum of Rs.6,502/- was reduced and the petitioner has incurred financial loss from January, 2018.

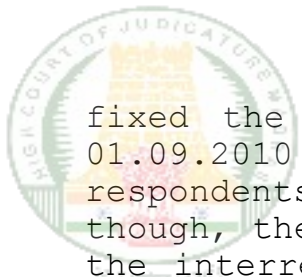
5. The petitioner submitted representation to the respondent seeking to ascertain the details as to why his pay was reduced. The third respondent informed the petitioner that since continuity of service was not given to the petitioner from the date of dismissal to the date of raising the Industrial Dispute, the petitioner was not entitled to pay revision based on the above settlements. But no written order was issued and the petitioner insisted the third respondent to issue an order in writing, so as to enable him to approach the competent legal forum. A show cause notice dated 24.04.2018 was issued, directing the petitioner to show cause as to why recovery of Rs.2,19,175.05/- shall not be recovered from the petitioner's salary in 48 installments at the rate of Rs.4566.15/-. The petitioner submitted his explanation on 15.05.2018, contending that the petitioner received a salary of Rs.28,180/- in December, 2017 and the same was reduced to Rs.21,678.20/- from January, 2018 and the pay revision is not confirmed on the petitioner. After the petitioner has submitted his explanation, the third respondent vide impugned order dated 22.05.2018, stating that the recovery cannot be cancelled. Therefore, left with no other option, preferred this writ petition.

6. The learned Counsel for the respondent submitted that the Labour Court has granted reinstatement with continuity of service except for the period from 12.06.2003 and 29.11.2011 and without backwages and therefore the petitioner is not entitled to any revision of pay entered under 12(3) settlement during that period.

7. Heard Mr.A.Rahul, the learned Counsel for the petitioner and Mr.J.Senthil Kumaraiah, the learned Standing Counsel for the respondent and perused the records.

8. The learned counsel for the respondent, on instructions, circulated statements indicating the liability of the petitioner. In the statement, it has been stated that the basic pay as on 01.05.2000 is Rs.3805/-, on 01.09.2003 it was Rs.5550/-, on 01.09.2007 it was Rs.7625/- and on 01.09.2010, the basic pay is Rs.7625/-. The petitioner's service details were taken into consideration on 01.09.2013, the petitioners basic pay was fixed as Rs.5200 with the Grade Pay of Rs.1600/-.

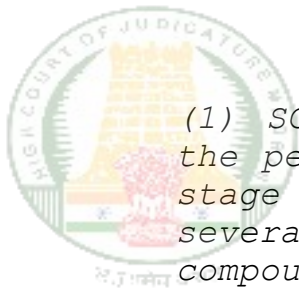
9. The learned counsel for the petitioner disputed this <https://hcservices.cemilms.gov.in/hcservices> the Pay, stating that the respondents ought to have



fixed the grade pay as applicable on 01.09.2003, 01.09.2007 and 01.09.2010 as Rs.5550, Rs.7625/- and Rs.7625/- respectively. The respondents ought to have taken, the revised pay into account, even though, the petitioner was not granted any continuity of service for the interregnum period. The respondents are liable to take the pay revision that was revised as per the settlement under Section 12(3) of the Industrial Disputes Act, which was entered between the Union and the Management. If the pay that was granted in the year 2000, was taken into account, then the petitioner will be seriously prejudice and the petitioner's scale of pay would be fixed in the year 2000 and that the same was not contemplated. The continuity of service was not granted during the interregnum period, which is only for the payment of salary alone and it is not applicable for taking the revision of pay. The petitioner has relied on a judgment rendered by the High Court of Delhi in 2014-IV-LLJ-413(Del) in the case of Mahabir Prasad Vs Delhi Transport Corporation, which reads as under:

*"20.The above discussion reveals that there appeared to be no standard pattern of directing how a reinstated employee is to be given the benefit after reinstatement. In Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Others (supra), for the first time, the restitutionary principle underlying reinstatement and other benefits was spelt out and a semblance of uniformity was attempted. If that is to be kept in mind, what is apparent in this case is that the petitioner had to battle for over a decade and a half of secure justice. The Labour Court held the enquiry against him illegal: went into the material and found that the charge of misconduct was baseless. It consequently directed reinstatement without backwages. Whilst the denial of backwages is not in question, the Award directed continuity of service. If DTC's contention were to be accepted, the petitioner would stand doubly penalized for the delay in securing justice, plainly for no fault of his. The denial of 15 years' salary would result in his denial of pension, or at least a vastly diminished pension, gratuity and other terminal benefits. If these benefits are denied, the direction to grant continuity of service would be a hollow relief. Furthermore, to restore him in the pay scale at the stage of his termination would be to freeze him in a pay scale that is no longer existent, or at least unrecognizable. It is pertinent that a withholding of 2 increments for two years, with cumulative effect has been held to be a major penalty (imposable only after an enquiry) since the increments "would not be counted in his time-scale of pay" in perpetuity. In other words, the clock would be set back in terms of his earning a higher scale of pay, by two*

*See Kulwant Singh v. State of Punjab, 1991 Supp*



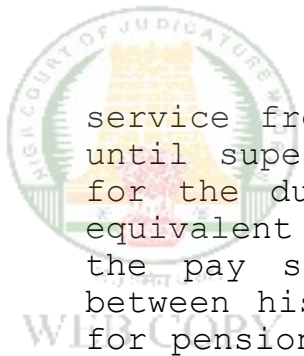
(1) SCC 504: LNIND 1990 SC 534. Keeping this in mind, if the petitioner were to be restored in the pay scale at the stage of his termination, it would amount to withholding several increments, and thus be equivalent to imposing a compounded major penalty.

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21. Consequently, it is held that the direction to grant continuity meant that the petitioner had to be given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. Since there is no direction to give consequential benefits, the petitioner cannot claim promotion as a matter of right; it would have to be in accordance with the rules. ACP benefits however, should be given. The notional pay fixation would also mean that he would be entitled to reckon the period between his removal and reinstatement as having been in employment for pension, gratuity and contributions to provident fund etc., This Court directs the DTC to issue an order extending these benefits to the petitioner for the 15 years period between his dismissal in 1995 and his eventual reinstatement in 2011, within eight weeks from today. The writ petition is allowed in these terms; there shall be no order as to costs."

10. The Labour Court has granted reinstatement with continuity of service except for the period from 12.06.2003 and 29.11.2011 and without backwages. Now the question that ought to be considered is that how to construe the phrase "continuity of service" and "continuity of service excluding some period". The judgment relied on by the petitioner held that the direction to grant continuity means to given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. The continuity would also means the notional pay fixation by taking the period between his removal and reinstatement as having been in employment for pension, gratuity and contributions to provident fund etc. **Then the converse** is that the "continuity excluding period from 12.06.2003 and 29.11.2011" means not to given notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. The "continuity excluded period from 12.06.2003 and 29.11.2011" would also means the period cannot be taken for notional pay for the period 12.06.2003 and 29.11.2011 for pension, gratuity and contributions to provident fund etc.

11. Therefore this Court is of the considered view that as per the Mahabir Prasad judgment stated supra, the petitioner is entitled to continuity of service excluding for the period from 12.06.2003 and 29.11.2011 means the petitioner is entitled to continuity of



service from 01.04.1992 to 11.06.2003 and then from 30.11.2011 to until superannuation for the purpose to grant notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. And notional pay fixation by taking the period between his removal and reinstatement as having been in employment for pension, gratuity and contributions to provident fund etc. This Court makes it clear that the petitioner is not entitled to calculate this period from 12.06.2003 and 29.11.2011 for the purpose to grant notional increments for the duration he was out of employment, in the grade and the equivalent grade which replaced it later, till he reached the end of the pay scale. And notional pay fixation by taking the period between his removal and reinstatement as having been in employment for pension, gratuity and contributions to provident fund etc.

12. The next plea raised by the petitioner is that the respondents have fixed the basic pay as Rs.5200 with the Grade Pay of Rs.1600/- and the same is not sustainable. It is seen from the records that the basic pay in the revision on 01.05.2000 is Rs.3805/- and the basic pay in the revision on 01.09.2003 it was Rs.5550/-. The respondents have unilaterally fixed the basic pay as Rs.5200. The petitioner was out of service from 12.06.2003 and the revision was on 01.09.2003, therefore to meet the ends of justice this Court is fixing the revision that was settled during 12(3) settlement on 01.09.2003. Therefore this Court direct the respondents to fix the pay revision as Rs.5550/- and not Rs.5200/-. The respondents are directed to implement this order within a period of six weeks from the date of receipt of the copy of the order.

13. The respondents are revising the scale of pay through 12(3) settlement and the issue raising in this writ petition shall also be settled in the settlement. Therefore, the respondents are directed to consider the plea of the petitioner to construe the "continuity of service" and "continuity of service excluding some period" in the next wage revision.

14. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar(CS)

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To

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Tamil Nadu State Transport Corporation (Madurai) Ltd.,  
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Madurai.

2.The General Manager,  
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3.The Assistant Manager,  
(Personnel and Administration Department),  
Tamil Nadu State Transport Corporation (Madurai) Ltd.,  
Madurai Region,  
Madurai.

+1 CC to M/s.A. RAHUL, Advocate ( SR-25942[F] dated 15/06/2022 )

**W.P (MD) No.11608 of 2018  
and**

**W.M.P. (MD) Nos.10576 and 10577 of 2018  
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ks (CO)  
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