



W.P. No.2358/2019, etc. Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.07.2023	14.07.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 2358, 2373, 2381, 2400, 2406 TO 2409, 2412, 2416, 2438, 2440, 2445, 2449, 2458, 2462, 2466, 2468 and 2469 OF 2019

AND

W.M.P. NOS.2608, 2609, 2619, 2621, 2647 TO 2655, 2657, 2665, 2666, 2626, 2628, 2644, 2646, 2691, 2694, 2696, 2698, 2702, 2703, 2708, 2709, 2731, 2734, 2741, 2743, 2746, 2748 TO 2752 OF 2019

W.P. NO. 2358 OF 2019

The Management
Tamil Nadu State Transport
Corporation Coimbatore Ltd.
Coimbatore.

.. Petitioner

- Vs -

1. Nethaji Transport Corporation
Pathugappu Thozhircangam
Rep. by its General Secretary
Mr. M.Anburaj on behalf of
Its Member Mr. S.Ganesan

2. The Presiding Officer
O/o The Principal Labour Court
Coimbatore.

.. Respondents



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W.P. No.2358 of 2019 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records relating to the order dated 30.05.2018 passed by the 2nd respondent in I.D. No.99 of 2016 and quash the same.

For Petitioner : Mr. A.Sundaravadhanam

For Respondents : Mr. Ry. George Williams for R-1

COMMON ORDER

The common award dated 30.05.2018 passed by the 2nd respondent, viz., Principal Labour Court, Coimbatore, allowing the claim of the workmen and directing the petitioner to pay the review benefits is assailed by filing the present writ petitions.

2. The brief facts of the case, necessary for disposal, are as under :-

The workmen, whose cases have been projected in the respective industrial disputes raised by the 1st respondent Union are working under the petitioner. The Common Service Rules of the petitioner/Corporation provides for review for advancement from one scale to another scale for employees in



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the Working Groups and Miscellaneous Groups after completing the prescribed length of service.

3. The workmen in the Working Group/Miscellaneous Group are entitled for review of their performance by the competent authority for advancement to the next higher scale/level of pay in the group. It is the further case of the petitioner that review for the purpose of advancement of scale would be after completion of six years, eight years and ten years of qualifying service at the first level, second level and third level, the said workmen would be entitled for review of his performance for advancement of scale.

4. It is the further case of the petitioner that if a workmen had suffered punishment and where increment was withheld without cumulative effect, for such of those workmen, the review would be conducted in the normal course, but the reduction in qualifying service shall be made for the period of postponement of increments without cumulative effect when the postponement is in operation and to that extent there is a shortfall in the



qualifying years of service, the same shall be treated as temporary shortfall in qualifying service and where the temporary shortfall is less than three months, the benefit of review shall be allowed from the notional date of review, but the monetary benefit shall be postponed to the extent of the shortfall and where the shortfall is more than three months, since the review is done only on the first day of each quarter, as per Rule 62, the notional date itself shall get postponed to the first day of the next quarter and the benefit of review shall be further regulated.

5. It is the further case of the petitioner that the workman does not automatically qualify for review benefits by simply counting his extent of service and the computation of qualifying service is based on the performance of the workman and the disqualified period of service is deducted for the purpose of granting review benefits in the settlement entered u/s 12 (3) of the Industrial Disputes Act.

6. It is the further case of the petitioner that the workmen, who are covered by the respective industrial disputes raised on their behalf by the 1st



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respondent/Union, had suffered punishment and accordingly, applying the Rules, the review benefit stood postponed accordingly in terms of Clause 62 and, accordingly, their benefits stood computed on the basis of the settlement arrived at u/s 12 (3) of the ID Act. Particular reliance has been placed on Rule 61 and 62 of the Common Service Rules of the Corporation, which pertains to grant of review benefit and the manner in which computation has to be made.

7. Since the workmen were granted the review benefits, though belatedly, due to the fact that each of the workman had suffered punishments in the course of employment, applying the provisions of Rule 62, the review benefit was granted to the workmen by computing their qualifying in line with the Common Service Rules. However, the disputes raised by the workmen resulted in the 2nd respondent passing the award directing the petitioner to pay the review benefits claimed by the workmen without advertent to the fact that the petitioner/Corporation has not placed the Service Rules, which they rely upon to show that the review benefit has been



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postponed on account of the various misconducts committed by the workmen for which they were awarded various punishments.

8. It is the further averment of the petitioner that the 2nd respondent has no jurisdiction to decide the industrial dispute, since as per the settlement arrived at u/s 12 (3) of the ID Act all the State Transport Corporations follow a uniform procedure for implementing the review benefits and only the settlement u/s 12 (3) would fall within the triable jurisdiction of the 2nd respondent and there being no quarrel with the 12 (3) Settlement, the 2nd respondent cannot decide the present dispute, as it has no jurisdiction to try the same. Since the award passed is wholly erroneous and without adverting to the Common Service Rules read with the settlement arrived at u/s 12 (3) of the ID Act, the present writ petitions have been filed.

9. Learned counsel appearing for the petitioner submitted that Rule 61 of the Common Service Rules provides for the manner in which the workmen would be eligible for the review benefit upon completion of qualifying service of 6/8/10 years respectively. It is the further submission of the learned



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counsel that the qualifying service of 6/8/10 years had been mutually agreed between the Union and the petitioner under the settlement entered into u/s 12 (3) of the ID Act.

10. It is the further submission of the learned counsel that Rule 61 deals with the manner in which qualifying service is computed. Drawing the attention of this Court to Rule 61 (b), it is the submission of the learned counsel that the length of service is to be reckoned for the purpose of increment by excluding the service which was not counted or which does not count for increment in the time scale.

11. It is the further submission of the learned counsel that the period by which the increment has been withheld with/without cumulative effect, at the reference point of time when the review is undertaken would be the determining factor in computing the qualifying service. It is further submitted that the review of performance of an employee shall be based on parameters as may be specified for each category and that the advancement to a higher scale would be based on the performance of the individual with reference to



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the norms and shall not be automatic, more particularly on completion of the prescribed length of qualifying service.

12. It is the further submission of the learned counsel that it has been the ratio laid down that the period of sufferance of punishment should be excluded for the purpose of computing the qualifying service and in the case on hand, all the workmen having suffered punishment during the period the said period has been excluded for the purpose of computing the qualifying service.

13. It is the submission of the learned counsel that each of the workmen with reference to their respective disputes, have suffered punishments and also on loss of pay, which service could not be counted for the purpose of computing the qualifying service with reference to the Rules and, therefore, it resulted in the postponement of advancement of scale of pay for the workmen. However, the said fact has not been taken into consideration by the 2nd respondent while passing the award. It is the further submission of the learned counsel that merely because the Common Service



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Rules were not produced before the Labour Court, an adverse inference has been drawn by the 2nd respondent to hold in favour of the workmen which is wholly erroneous as the said service rules is a public document, very much available in the public domain.

14. In fine, it is the submission of the learned counsel that on an erroneous understanding of the entire provision and wrong interpretation, the 2nd respondent has passed the award which requires interference at the hands of this Court.

15. In support of the aforesaid submissions, learned counsel for the petitioner placed reliance upon the following decisions :-

- i) *Union of India & Ors. – Vs – K.Krishnan (1992 (3) SCC 50);*
- ii) *Chairman, State Bank of India & Ors. (1996 (7) SCC 63);*
- iii) *S.Elumalai – Vs – The Managing Director & Anr. (W.P. No.5608 of 2010 dated 6.9.2019)*

16. Per contra, learned counsel appearing for the 1st respondent submitted that what is envisaged in the settlement u/s 12 (3) has to be

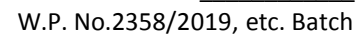


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followed in letter and spirit and the benefits of advancement of scale upon completion of the requisite length of service. However, the petitioners have been granted the advancement after two years from their actual date of entitlement, which has been found to be erroneous in the light of the settlement and, accordingly, the 2nd respondent has granted the benefit to the workmen, which does not suffer perversity and the same deserves to be sustained.

17. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

18. The undisputed facts are that the workmen are entitled for the review benefits as per the Settlement entered into u/s 12 (3) of the ID Act. It is also not in dispute that the earlier settlement contemplated review every 6/7/8/8/3 years and there were certain changes subsequently. Upon entering into the new settlement, the said settlement contemplated review on 6/7/8/8/3 basis. Even the petitioner has no quarrel with regard to the



19. A perusal of the order passed by the 2nd respondent reveals that while an exhaustive narration had been made by the Labour Court, however, the result is premised on the basis that the Common Service Rules has not been placed before the Court for appreciation. The said finding recorded by the 2nd respondent is not only erroneous, but it is perverse. Not placing the Rules cannot in any way advance the case of the workman. If at all the 2nd respondent wanted to peruse the Rules, direction should have been made to submit the Rules. Further, as rightly pointed out by the petitioner, the Service Rules is a public document, available in the public domain and, therefore, the same cannot be a reason to negate the stand of the petitioner herein.

20. Be that as it may. There is no quarrel about the fact that the workmen concerned have suffered punishment during various periods during



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the period of computation of qualifying service and they have also been on loss of pay for certain lengths of time. A tabulated statement in this regard has been placed before this Court, which is not disputed by the learned counsel appearing for the workmen. In the aforesaid backdrop, the only issue that requires consideration is the manner in which computation of qualifying service is to be made as provided for under Rule 61 of the Service Rules.

21. Before proceeding to analyse the Rule, a perusal of the Settlement arrived at u/s 12 (3) reveals that when the exercise of grant of review benefit to the workmen is undertaken, Clause 19 of the Settlement prescribes that if the advancement of increment is to be postponed, the workmen should be put on notice about the same. However, it is to be pointed out that the workmen have not been put on notice about the postponement of their review benefit on account of the reason of their sufferance of punishment and loss of pay. However, it is to be stated that the above mechanism is devised in the Settlement only to update the workmen that the review benefit will be granted to the workmen from a particular time onwards for certain reasons so that the workmen would be abreast of the benefit which they



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would be getting. Though the act of the petitioner in not putting the workmen on notice about the delay in grant of review benefit could at best be termed as a procedural irregularity, but by no means could it be said to be an illegality stretchable to the extent of interfering with the impugned order, as the procedural irregularity does not in any way affect the workmen otherwise, as even the communication to the workmen is only an information and it does not attract any objection from the workmen, which otherwise they are entitled to give at any point of time.

22. Rule 61 of the Common Service Rules clearly prescribe the manner in which the review benefit will be granted to the workmen. The Rule is categorical, in that the review benefit of advancement to a higher scale within a Working Group/miscellaneous group on completion of the prescribed length of qualifying service, which shall be on the basis of performance of the individual with reference to the norms and the grant of benefit shall not be automatic. The review benefit of advancement of a higher scale is granted after a particular period of time, as envisaged in the



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Settlement and is subject to the performance of the individual with reference to the norms.

23. From the above, it is evident that the Committee, which reviews the case of the workmen, on the basis of the individual performance of the workmen and on the basis of the norms and records, is to arrive at a conclusion to grant the benefit of advancement to a higher scale to the workman, provided the workman fulfils the qualifying service.

24. The length of service is provided for under Rule 61 (b), which clearly prescribes that for the purpose of increment in time scale of pay, the service which cannot be counted for the purpose of grant of increment shall be excluded. The period of qualifying service is provided for in the Settlement and there is no dispute with regard to the same. The exclusion of certain periods of the service while computing the qualifying service alone is the issue, as according to the workmen, irrespective of their sufferance of punishment or loss of pay, they should be granted the review benefit on



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completion of the period prescribed under the Settlement and no part of the period would stand excluded.

25. With regard to the aforesaid contention, learned counsel for the petitioner pressed into service the decision of the Apex Court in *Golak Bihari case (supra)*, wherein, the Apex Court had laid down the ratio with regard to the manner in which the period of service during which the employee was suffering punishment should be reckoned. In the said context, the Apex Court held thus :-

"7. The only question which requires consideration is whether in pursuance of the debarment policy laid down by the appellant-Bank, the respondent has been rightly excluded from consideration for promotion on account of the penalty of reduction of pay being operative when such promotion came up for consideration. This question has been considered by this Court in Union of India v. K. Krishnan 1992 (S3) SCC 50 : 1992 SCC(L&S) 995 : 1992 (21) ATC 842]. In that case the punishment of withholding of increment in salary for a period of one year and six months had been imposed on the employee and as a result of the said penalty the employee, who was successful at the test for promotion prior to the imposition of penalty, was not promoted in view of Rule 157 of the Post and



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Telegraph Manual - Vol. III which provided that even where the competent authority considers the candidate fit for promotion in spite of punishment in a departmental proceeding the promotion shall not be given effect to during the currency of the penalty. This Court, after referring to the said Rule, has observed : (SCC p. 52, para 4)

"We have considered the matter closely and in our opinion the view taken by the Tribunal both in the impugned judgment and in the earlier decisions holding that as a result of the provisions of Rule 157 forbidding the promotion of a State employee during the currency of the penalty results in a second punishment, is not correct. There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding leading to the withholding of increment, and the denial of promotion during the currency of the penalty is merely a consequential result thereof. The view that a government servant for the reason that he is suffering a penalty or a disciplinary proceeding cannot at the same time be promoted to a higher cadre is a logical one and no exception can be taken to Rule 157. It is not correct to assume that Rule 157 by including the aforementioned provision is subjecting the government servant concerned to double jeopardy. We do not find any merit in the argument that there is no justification or rationale behind this



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policy; nor do we any reason to condemn it as unjustified, arbitrary and violative of Articles 14 and 16 of the Constitution of India. On the other hand, to punish a servant and at the same time to promote him during the currency of punishment may justifiably be termed as self-contradictory."

26. The Apex Court has further held that an employee, who was found guilty of a misconduct cannot be treated on par with other employees and denial of benefit cannot be said to be discrimination. Referring to the decision in the case of **Union of India – Vs – K.V.Janakiraman (1991 (4) SCC 109)**, the Apex Court in *Golak Bihari case (supra)* held as under :-

"8. Similarly, in Union of India v. K.V. Jankiraman [1991 (4) SCC 109 : 1993 SCC(L&S) 387 : 1993 (23) ATC 322], this Court has laid down : (SCC p. 123, para 29)

"An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti.



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When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct.”

27. It is not the case of the workmen that they have not suffered any punishment during the period under review. However, their only grievance is that the said period cannot be excluded for the purpose of computation of qualifying service, which contention cannot be countenanced in view of the ratio laid down in the aforesaid decision.

28. Further it is also not the case of the workmen that they were not on loss of pay. Such being the case, necessarily the said period of service should stand excluded for the purpose of computing the qualifying service for review benefits and the petitioner has rightly computed the qualifying service by excluding the aforesaid periods for granting review benefits, which alone has resulted in the review benefit being given to the workmen belatedly, after the workmen completed their qualifying service. However, the elemental rule of



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law has been given a go-by by the Labour Court while deciding the issue and treading on a totally different tangent, the Labour Court has come to an erroneous conclusion and has passed the impugned order, which is not only on a flawed logic, but also sans law. The award passed by the 2nd respondent, on the foundation of the above findings cannot be allowed to survive. Further, the decisions relied on by the 2nd respondent were totally irrelevant to the facts in issue and cannot be pressed into service.

29. In identical circumstances, when a writ petition at the behest of a workman with regard to the grant of review benefit was filed before this Court in *Elumalai's case (supra)*, a learned single Judge of this Court has passed the following order :-

"8. Keeping the performance in mind, the review was postponed by one year. The case of the petitioner for review was once again considered for 01.05.2002 and it was postponed for the period of six months. The petitioner contends vehemently that the recommendation of the Committee for the review on 01.05.2002 has not been given which automatically would show that the petitioner was entitled to a review for 01.05.2002. This Court cannot accept the contention because the Review Committee for 01.05.2003



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states that the review on 01.05.2002 had been postponed for the period of six months. Similarly, in the review conducted for 01.11.2002 again the case of the petitioner was postponed by another six months. Finally, the benefit of the review was granted on 01.05.2003.

9. As rightly pointed out by the learned counsel for the petitioner the review is not automatic, the conduct of the workmen is a major indicator to grant the benefit of advancement of scale. In view of the fact that the petitioner has been awarded number of punishments from the time he joined, this Court does not see any infirmity in the order postponing the benefit of the review for the period of two years.”

30. The case of the workmen herein not only being identical, but is squarely covered by the aforesaid decision. Further, the tabulated statement showing the manner in which the qualifying service has been computed in respect of each workman also reveals that it has been done in the manner as provided for in the Service Rules.

31. As already aforesaid, the only procedural irregularity committed by the petitioner is the non-service of notice with regard to the delay in granting



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the review benefit, which irregularity cannot be the basis to hold that the grant of review benefit belatedly is unsustainable. When all the provisions of the service rules have been followed by the petitioner in computing the qualifying service of the workmen for granting review benefits, the mere non-service of notice would not render the said order illegal and, the findings arrived at by the Labour Court without appreciating the whole factual matrix in proper perspective deserves to be interfered with by this Court.

32. For the reasons aforesaid, the award passed by the 2nd respondent is set aside and all the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Index : Yes / No

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To

1. The Presiding Officer
O/o The Principal Labour Court
Coimbatore.

2. The Management
Tamil Nadu State Transport
Corporation Coimbatore Ltd.
Coimbatore.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NO.2358 OF 2019,
ETC., BATCH**



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**Pronounced on
14.07.2023**