



WEB COPY



WP.Nos.8571, 8940, 8944
& 8946 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.8571, 8940, 8944 & 8946 of 2019
& WMP.Nos.9089, 9510, 9512 & 9514 to 9517 of 2019

The Management, Tamil Nadu
State Transport Corporation
(Coimbatore) Ltd., Mettupalayam
Road, Coimbatore-641043.

...Petitioner in
all the WPs

Vs

1.M.Subramani
2.P.Jagathesh
3.M.Marimuthu
4.P.Nagaraj
5.S.M.Babu
6.P.Ganesan
7.P.Chinnadurai

...Respondents in
WP.No.8571 of 2019

R.Rangaraj

...Respondent in
WP.No.8940 of 2019

N.Rajendran

...Respondent in
WP.No.8944 of 2019



*WP.Nos.8571, 8940, 8944
& 8946 of 2019*

P.Ramamoorthi

...Respondent in
WP.No.8946 of 2019

all the respondents C/O Bharathiya Pokkuvarathu
Thozhilalar Sangam (BMS), 231, Sathy Road,
Ganapathy, Coimbatore-6.

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records relating to the common order dated 23.10.2018 passed by the Principal Labour Court, Coimbatore respectively in C.P.Nos.65, 98 & 150 of 2015 and 98 of 2016 and quash the same.

For Petitioner in
all the WPs : Mr.A.Sundaravadhanan

For Respondents in
all the WPs : Mr.V.Ajoy Khose

COMMON ORDER

These petitions are filed by the petitioner corporation seeking to quash the common order dated 23.10.2018 respectively made in C.P. Nos.65, 98 & 150 of 2015 and 98 of 2016 on the file of the Principal Labour Court, Coimbatore.



*WP.Nos.8571, 8940, 8944
& 8946 of 2019*

WEB COPY

2. The facts leading to filing of these cases are as follows :

(i) This is the second round of litigation. The petitioner corporation is a State owned corporation, in which, all the posts used to be filled up through the Employment Exchange concerned. The petitioner engaged the services of the respondents as cleaning boys so as to clean the buses during nights. They were not appointed through the Employment Exchange. The respondents were paid on piece rate basis. They were orally terminated. Earlier, along with others, they raised industrial disputes, in which, the Labour Court, Coimbatore directed the petitioner corporation to regularize their services with continuity of service, but without back wages.

(ii) Thereafter, the issue ended up to the Supreme Court at the instance of the petitioner corporation wherein it was held that the Labour Court was not justified in directing the petitioner corporation to regularize the services of the workmen while passing the order of reinstatement. The Supreme Court set aside the earlier awards passed by the Labour Court so far as they related to regularization of the services of the workmen and upheld the remaining part of the awards with regard to reinstatement.



*WP.Nos.8571, 8940, 8944
& 8946 of 2019*

WEB COPY

(iii) Thereafter, the respondents filed computation petitions under Section before the Principal Labour Court, Coimbatore and they were partly allowed by the impugned common order directing the petitioner corporation to pay a sum of Rs.75,532.50 Ps to all the petitioners in W.P.Nos.8571, 8940 and 8944 of 2019 and the petitioner in W.P.No. 8946 of 2019 was directed to be paid a sum of Rs.61,195.50 Ps. Challenging the same, the petitioner corporation is before this Court.

3. When both W.P.No.8571 of 2019 as well as W.P.Nos.8940, 8944 and 8946 of 2019 came up for admission respectively on 27.03.2019 and 28.03.2019, while ordering notice of motion, this Court granted an order of interim stay for a period of four weeks.

4. Learned counsel for the petitioner management would submit that admittedly, the respondents in respective Writ Petitions were engaged as bus washers in the petitioner management and they were paid on piece rate basis depending on the number of buses cleaned by them and they were not issued



*WP.Nos.8571, 8940, 8944
& 8946 of 2019*

WEB COPY

any appointment orders. Even in the earlier award passed in I.D.Nos.388 to 404/1997, the Labour Court held that they are not entitled for back wages, however, they were granted the relief of regularization of service and reinstatement with continuity of service which was challenged by the petitioner corporation before the Hon'ble Supreme Court wherein, it was held that the workmen were illegally terminated however, they are not entitled for regularization of service and in other aspects, the award of the Labour Court remained unaltered. Subsequently, in the year 2001, the workmen were reinstated into service. He further submitted that since the workman are not entitled for any backwages, the award passed under Section 33(C)-2 of the Act cannot be sustained in view of the fact that the workmen do not have any pre-existing right to claim the monetary benefit. However, in the present case, in the absence of any pre-existing right, the petitions have been filed under Section 33(C)-2 of the Act pursuant to which, the award under challenge has come to be passed which is wholly contrary to the provisions of Section 33(C)-2. Hence, the award under challenge is liable to be set aside.



*WP.Nos.8571, 8940, 8944
& 8946 of 2019*

WEB COPY

5. Learned counsel appearing for the respondents would submit that contrary to the provisions of Section 25(F) of the Industrial Disputes Act, 1947 the workmen who were engaged in the services of the petitioner corporation were illegally terminated from service in the year 1997 which resulted in passing of the earlier award dated 31.05.2001 in favour of the respondents/workmen. Subsequently, in the year 2001, the workmen were reinstated into service. The workmen wrote a joint letter to the petitioner corporation claiming wages from the period of non-employment till the date of reinstatement, though, the same was addressed by the petitioner corporation, they did not chose to reply for the same. The above facts have been elaborately discussed by the Labour Court while passing the impugned award. Hence, the findings rendered by the Labour Court in granting the award amount to the workmen requires no interference. Accordingly, he prays for dismissal of these Petitions.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents in all the writ petitions.



*WP.Nos.8571, 8940, 8944
& 8946 of 2019*

WEB COPY

7. It is seen from the records that after adjudication, the Hon'ble Supreme Court has held that the workmen are not entitled for claiming regularization of services on the ground that they have not completed 240 days of continuous service in the petitioner corporation. It is further seen that the Labour Court has recorded various dates on which the workmen entered into the services of the petitioner. However, this Court is at a loss to find as to how the Labour Court has arrived at the respective dates so as to compute the amount payable to the workmen. Further, the workmen have not established any pre-existing right to receive the said amount from the petitioner. Further, the mandatory requirement of completion of 480 days of continuous service has also not been discussed in the impugned award. It is seen that even in the earlier round of litigation, the workmen were denied backwages which has also been confirmed by the Hon'ble Supreme Court. Such being the case, there being denial of backwages, there arises no pre-existing right to the workmen to file the computation petition for seeking monetary compensation.



*WP.Nos.8571, 8940, 8944
& 8946 of 2019*

WEB COPY

8. As per Section 33-C(2) of the Industrial Disputes Act, 1947, there should be a pre-existing right in favour of the workman, which alone would be the basis on which the workman could file a petition u/s 33-C(2). The workman has to establish such right so as to claim entitlement for receiving the said amount. If at all the workman is aggrieved over non-payment of any allowance, the proper course open for him would be to file appropriate application before the appropriate Government seeking reference of the dispute for adjudication and subject to the outcome of the dispute, the workmen can thereafter, file computation petition claiming monetary relief, if the dispute ends in his favour, which alone can be computed in terms of money, however, without there being any award, which confers certain benefit on the workman, it is not open to the workman to file a petition u/s 33-C(2) claiming any benefit which could be computed in terms of money. However, in the present case, the workmen are not entitled for any backwages except for reinstatement with continuity of service and without there being any award in their favour, have directly filed a computation



*WP.Nos.8571, 8940, 8944
& 8946 of 2019*

WEB COPY

petition under 33-C(2). Therefore, this Court is of the view that the workmen are not entitled for any wages as per the claim made in the computation petitions. Hence, the award passed by Labour Court granting the award amount pursuant to the computation petitions filed under 33-C(2) requires interference and the same is liable to be set aside.

9. Accordingly, the impugned award is set aside and these Writ Petitions are allowed. However, liberty is granted to respondents/workmen to approach the competent authority with regard to permanency by filing appropriate applications. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

30.08.2023

Index : Yes (or) No

Neutral Citation : Yes (or) No

NHS



WEB COPY



*WP.Nos.8571, 8940, 8944
& 8946 of 2019*

M.DHANDAPANI, J

NHS

To

The Principal Labour Court,
Coimbatore.

WP.Nos.8571, 8940, 8944 &
8946 of 2019 & WMP.Nos.9089,
9510, 9512 & 9514 to 9517
of 2019

30.08.2023

10/10