



W.P.No.26071 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.26071 of 2018

And

W.M.P.No.30299 of 2018

The Management
Tamil Nadu State Transport Corporation
(Coimbatore) Limited,
37, Mettupalayam Road,
Coimbatore – 641 043.

... Petitioner

Vs.

1.A.Alageswaran

2.The Principal Labour Court,
Coimbatore.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari after calling for the records relating to the order dated 23.01.2018 passed in C.P.No.565 of 2013 on the file of the second respondent and quash the same as being illegal, arbitrary and unconstitutional.

For Petitioner : Mr.A.Sundaravadhanam

For Respondents : R1 – No Appearance
R2 – Labour Court



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ORDER

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The petitioner has filed this writ petition seeking issuance of Writ of Certiorari after calling for the records relating to the order dated 23.01.2018 passed in C.P.No.565 of 2013 on the file of the second respondent and to quash the same as being illegal, arbitrary and unconstitutional.

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



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of his performance for advancement of scale.

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4.It is the further case of the petitioner that if a workman 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



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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 first respondent, had suffered punishment and accordingly, applying the Rules, the review benefit stood postponed accordingly in terms of Clause 62 and, accordingly, his 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 workman was granted the review benefits, though belatedly, due to the fact that the workman had suffered punishments in the course of employment, applying the provisions of Rule 62, the review benefit was granted to the workman by computing his qualifying in line with the Common Service Rules. However, the computation petition filed by the workman resulted in the second respondent passing the award directing the petitioner to pay a sum of Rs.40,040/- to the workman towards review benefits, without



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adverting 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 postponed on account of the various misconducts committed by the workman for which he was awarded various punishments.

8.It is the further averment of the petitioner that the second respondent has no jurisdiction to decide the computation petition, 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 second respondent and there being no quarrel with the 12 (3) Settlement, the second 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 petition has been filed.

9.Learned counsel appearing for the petitioner submitted that Rule 61 of the Common Service Rules provides for the manner in



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which the workman would be eligible for the review benefit upon completion of qualifying service. It is the further submission of the learned 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



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scale would be based on the performance of the individual with reference to 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, the workman having suffered punishment during the said period has been excluded for the purpose of computing the qualifying service.

13. It is the submission of the learned counsel that the workman with reference to his dispute, has 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 workman. However, the said fact has not been taken into consideration by the second respondent while passing the award. It is the further submission of the learned counsel that merely because the Common Service Rules were not produced before the Labour Court, an adverse inference has been drawn by the second



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respondent to hold in favour of the workman 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 second 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. There is no representation for the first respondent. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing for the petitioner and perused the materials available on record.



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17. The undisputed facts are that the workman is 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 period of review for providing advancement in scale on the basis of the review of the performance of the workman. The only grievance of the petitioner is that the said review would be on the basis of the provision under Rule 61 of the Common Service Rules.

18.A perusal of the order passed by the second 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 second 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 second respondent wanted to peruse the Rules, direction should have been



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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.

19.Be that as it may. There is no quarrel about the fact that the workman has suffered punishment during various periods during the period of computation of qualifying service and he has also been on loss of pay for certain lengths of time. 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.

20.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 workman has not been put on notice about the postponement of his review benefit on account of the reason of his sufferance of punishment and loss of pay. However,

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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 workman from a particular time onwards for certain reasons so that the workman would be abreast of the benefit which he would be getting. Though the act of the petitioner in not putting the workman 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 workman otherwise, as even the communication to the workman is only an information and it does not attract any objection from the workman, which otherwise he is entitled to give at any point of time.

21. 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



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benefit of advancement of a higher scale is granted after a particular period of time, as envisaged in the Settlement and is subject to the performance of the individual with reference to the norms.

22.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.

23. 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 workman, irrespective of his sufferance of punishment or loss of pay, he should be granted the review benefit on completion of the



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

24. 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



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for promotion prior to the imposition of penalty, was not promoted in view of Rule 157 of the Post and 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



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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 16 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."

25. 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*



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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. 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."

26. It is not the case of the workman that he has not suffered any punishment during the period under review. However, his 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.

27. Further it is also not the case of the workman that he was



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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 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 second respondent, on the foundation of the above findings cannot be allowed to survive.

28. 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



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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 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."

29. The case of the workman herein not only being identical,



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but is squarely covered by the aforesaid decision. Further, the manner in which the qualifying service has been computed in respect of the workman also reveals that it has been done in the manner as provided for in the Service Rules.

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

31.For the reasons aforesaid, the order passed by the second respondent is set aside and the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Principal Labour Court,
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M.DHANDAPANI,J.
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