BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the order	Date of Pronouncing the order
31.01.2023	15.02.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Rev.Aplc.(MD)No.147 of 2022
and
C.M.P.(MD)No.10001 of 2022

The Managing Director,
Tamil Nadu State Transport Corporation (Madurai) Ltd.,
Bye-Pass Road,
Madurai – 625 016. ... Petitioner

vs.

1.S.Taj

2.The Presiding Officer,
Labour Court,
Madurai – 625 020.

3.The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai – 600 002. ... Respondents

Prayer :- Review Application filed under Order 47 Rule 1 read with Section 114 of C.P.C., against the judgment dated 15.12.2021, passed in W.A.(MD)No.627 of 2020.

For Petitioner : Mr.J.Senthil Kumaraiah

ORDER

DR.G.JAYACHANDRAN, J.

This Review Application is filed by the Tamil Nadu State Transport Corporation (Madurai) Ltd., against the judgment dated 15.12.2021, passed in W.A.(MD)No.627 of 2020.

2. It is a case of a bus conductor working under the Tamil Nadu State Transport Corporation for nearly 14 years, placed under suspension for misconduct and misappropriation of fare. Later, he was removed from service on 01.07.1987 after conducting an enquiry. The same was challenged by the first respondent/employee before the Labour Court, Madurai, in I.D.O.P.No.126 of 1991.

3. The sum and substance of the charge, for which, he was dismissed from service is in connection with misappropriation of Rs.43.70, being the collection amount from the passengers. The Labour Court found that the dismissal order without any benefits for the service rendered by him nearly for a period of 14 years, is inappropriate and therefore, directed the Management to pay Rs.1,40,000/- as compensation.

4. The aforesaid award was challenged by the Management in W.P.No. 12667 of 1997 before the Principal Seat of this Court. The said Writ Petition was

allowed on 07.02.2001, by setting aside the award of the Labour Court and the matter was remitted back to the Labour Court for conducting fresh trial. Thus, on 28.02.2012, the Labour Court in the *de novo* trial, held that the non-employment period of the first respondent/employee is not justifiable and therefore, directed the Management to disburse the retirement benefits to him within a period of three months from the date of receipt of the order, since the first respondent/employee has already attained the age of superannuation.

5. Since the first respondent/employee has already received his eligible terminal benefits on 08.08.1988 itself, the Management has not taken any steps to challenge the said award before this Court. However, the first respondent/employee filed a claim petition before the Labour Court, Madurai, in C.P.No.60 of 2013, claiming a sum of Rs.9,80,564/- being the arrears of pension, bonus, performance incentive and pension commutation. The Management had filed a detailed counter affidavit denying the eligibility of pension and other benefits. The Labour Court, vide its award dated 26.05.2015, dismissed the said claim petition.

6. Against the said order, the first respondent/employee preferred W.P.(MD)No.13811 of 2015 before this Court. The learned Single Judge, vide its order dated 18.02.2020, disposed of the said Writ Petition preferred by the first respondent/employee with a direction to the Management to arrive at a working sheet

showing the details of employee's contribution towards pensionary benefits for non-working period of the first respondent/employee within a period of eight weeks from the date of receipt of a copy of the order and on receipt of such working sheet, the first respondent/employee was directed to settle his share of contribution to the Management, within a period of eight weeks thereafter. On receipt of the employee's contribution from the first respondent/employee, the Management was directed to release all the pensionary benefits to the first respondent/employee, within a period of eight weeks.

7. Being aggrieved by the said order, the Management preferred W.A.(MD)No.627 of 2020. The said Writ Appeal came to be dismissed on 15.02.2021. The Division Bench of this Court passed the following order:-

> *"4. We have perused the award of the labour Court. The labour Court clearly stated that the respondent writ petitioner is entitled for the benefits for the period of duty of employment sans back wages. A clear finding has been recorded that there is no evidence to show that the respondent writ petitioner has gone employment elsewhere and therefore, though he is not entitled for reinstatement, he is entitled for continuity of service with attendant benefits.*
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> *5. As stated aforesaid, the order has become final. There is a difference between jurisdiction of the labour Court, when a dispute is raised and the petition filed seeking*

computation of the benefits. There is no role for adjudication in a computation petition. Therefore, not much of a reliance can be made. The learned single Judge has rightly allowed the writ petition taking into consideration of the award.

6. In such view of the matter, we do not find any error to interfere with the order of the learned Single Judge. The learned single Judge is right in asking the appellant to take into consideration of the period, in which, the respondent writ petitioner is out of employment, as there was no challenge to the award, of course, subject to the condition that the respondent will have to pay his part of the contribution."

8. The said judgment is now sought to be reviewed by the Management on the ground that the first respondent/employee on his removal from service, has received the eligible provident fund contribution of Rs.13,818/- through a cheque, dated 08.08.1988 and therefore, the first respondent/employee is not entitled for any pensionary benefits. It is also an admitted fact by the first respondent/employee that he was gainfully employed in abroad during the period of dismissal. Therefore, the order of the learned Single Judge, directing the Management to pay pensionary benefits after collecting contribution from the employee is *per se* amounts to unjust enrichment.

9. As per the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules, the first respondent/employee is not entitled for contributory pension. However, when this was brought to the notice of the Division Bench of this Court in the Writ Appeal, the same was not properly appreciated and therefore, the judgment of the Division Bench, dated 15.02.2021, has to be reviewed.

10. Referring to the provisions of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules and withdrawal of his contribution after the first round of litigation, it is contended by the learned counsel appearing for the Transport Corporation/review petitioner that the judgment of the Division Bench of this Court, confirming the order of the learned Single Judge in W.P.(MD)No. 13811 of 2015, dated 18.02.2020, has to be reviewed.

11. This Court, on considering the grounds raised in the Review Application and the order dated 15.02.2021, which is sought to be reviewed, finds that the first respondent/employee, who was dismissed from service for the alleged misappropriation of Rs.43.70 was at last found to be unjustifiable. Hence, the dismissal order was set aside. The first respondent/employee, by the time, has attained the age of superannuation. Therefore, the Management was directed to disburse the retirement benefits within a period of three months. Based on the award of the Labour Court, passed in I.D.O.P.No.126 of 1991, dated 28.02.2012, the first

respondent/employee preferred Claim Petition No.60 of 2013 to implement the award. The Claim Petition was contested by the Management citing that the Labour Court has directed to pay the retirement benefits alone and not continuity of service and other attendant benefits. Therefore, except the retirement benefits, the first respondent/employee is not entitled for any other attendant benefits, such as, continuity of service.

12. In its order in the Claim Petition, the Labour Court has considered the rival submissions and also the introduction of pension scheme in the Tamil Nadu State Transport Corporation with effect from 01.09.1998 and suspended after 31.03.2003. It upheld the contention of the Management that during the said period, the first respondent/employee was not in service and therefore, he is not entitled for pensionary benefits during that period. Further, during the period of suspension, the first respondent/employee was gainfully employed in a foreign country and the same has been admitted by him in the cross-examination. Therefore, Claim Petition No.60 of 2013 preferred by the first respondent/employee seeking monetary benefits and other attendant benefits for the period he was not in active service was dismissed by the Labour Court at Madurai.

13. Being aggrieved, the first respondent/employee preferred W.P.(MD)No. 13811 of 2015, in which, the learned Single Judge has passed an order to collect the

contribution from the first respondent/employee and pay pension. On appeal, the Division Bench has confirmed the said order. As pointed out by the learned counsel appearing for the Management/review petitioner ignoring the admission of the first respondent/employee that he was gainfully employed at abroad, the Division Bench at Paragraph 4 of the judgment, which is now sought to be reviewed, has held in favour of the first respondent/employee on the impression that there is no evidence to show that the first respondent/employee was employed during the period of removal. This is contrary to the own admission of the first respondent/employee. Hence, this Court is of the view that the award of the Labour Court, dated 28.02.2012, in I.D.O.P.No.126 of 1991 in respect of disbursement of the retirement benefits cannot be construed by implication, includes pensionary benefits. Particularly, when the service of the first respondent/employee did not fall under the regular pension scheme, but governed by the provisions of the Tamil Nadu State Transport Corporation Employees Pension Fund Trust Rules.

14. It is also to be noted that the Pension Rules for the employees of the Tamil Nadu State Transport Corporation after 31.03.2003 was different from the Pension Rules prevailing between 1998 to March 2003. The first respondent/employee effectively served for 14 years from 1973 to 1987. He attained the age of superannuation on 31.12.2005, much prior to the order passed in W.P.(MD)No.13811 of 2015, dated 18.02.2020. He claims terminal benefits on the

presumption that he deemed to have served for 34 years. The Labour Court while holding the dismissal as unjustifiable, directed the Management to disburse the retirement benefits. In his Claim Petition No.60 of 2013, the first respondent/employee has sought for all attendant benefits for a period of 18 years from 01.07.1987 to 2005. This claim is not in consonance with the order of the Labour Court, dated 28.02.2012, passed in I.D.O.P.No.126 of 1991. It is for that reason, the Labour Court, Madurai, dismissed C.P.No.60 of 2013.

15. The first respondent/employee has preferred W.P.(MD)No.13811 of 2015 on the premise that the Labour Court award includes the settlement of terminal benefits, such as pension for the entire 34 years, which includes 18 years of non-service. The said period in fact to be considered as *dies non*. Though the dismissal of the first respondent/employee from service was found to be unjust, equally, directing the Management to pay attendant benefits and pension for non-service period, will also amount to unjust enrichment. More particularly, when the first respondent/employee admits that he was gainfully employed in abroad after his dismissal from service.

16. As observed by the Labour Court, the first respondent/employee is only entitled for retirement benefits, which could only be the pension for he served effectively. This period of service is 14 years. As per the Pension Rules governing

the Tamil Nadu State Transport Corporation, 10 years of effective service is sufficient for computing pension. The dismissal order, which was set aside subsequently after being held as unjust, will entitle the first respondent/employee for retirement benefits, based on the period of effective service, which he could not have got otherwise than the intervention of the Labour Court in I.D.O.P.No.126 of 1991.

17. It is relevant to note that the first respondent/employee has already received his contribution made during his service. He admits that he has been gainfully employed in abroad after the dismissal order. The Division Bench, contrary to the admission of the first respondent/employee, has observed that there is no evidence for his gainful employment in abroad. Admission is the best form of evidence. Ignoring the said admission, the Court has passed order. The blatant omission warrants this Court to review its judgment, dated 15.02.2021.

18. Accordingly, the Review Application is allowed to the effect that the Management is directed to compute the pension for the first respondent/employee based on his 14 years of effective service and fix his pension within a period of three months. The arrears of pension should be paid with 9% interest from the date of superannuation till the date of this order. The arrears should be paid in 9 equated

monthly installments, commencing from April 2023 along with the monthly pension fixed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SMN2

[G.J., J.] [S.M., J.]
15.02.2023

To

1.The Presiding Officer,
Labour Court,
Madurai – 625 020.

2.The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai – 600 002.

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

SMN2

PRE-DELIVERY ORDER MADE IN
Rev.Aplc(MD)No.147 of 2022

DATED : 15.02.2023