



W.P.(MD) No.19818 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 24.08.2023

ORDERS PRONOUNCED ON : 27.09.2023

CORAM

THE HON'BLE MR.JUSTICE BATTU DEVANAND

W.P.(MD) No.19818 of 2016

S.Thukkamuthu

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.The Management,
Tamilnadu State Transport Corporation,
(Madurai-Division-I) Limited,
Bye Pass Road, Madurai-625 016.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records connected with the impugned order passed by the 1st respondent in I.D.No. 23/2012 dated 30.12.2013 and quash the same to the extent of denial of continuity of service for the period from 19.03.2003 to 14.11.2010 and consequently direct the 2nd respondent to consider the claim of the petitioner



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for continuity of service from 19.03.2003 to 14.11.2010 notionally for the purpose of calculation of pensionary benefits without backwages.

For Petitioner : Mr.S.Govindan
For Respondent-2 : Mr.J.Senthil Kumariah
Standing Counsel
Respondent-1 : Court

ORDER

Heard learned counsel for the petitioner and learned Standing Counsel for the 2nd respondent-Corporation.

2. The case of the petitioner is that he joined as Conductor in the 2nd respondent-Corporation on 11.09.1998. After completion of 15 years service, the petitioner was dismissed by order dated 18.03.2003 stating that he had attempted misappropriation of Rs.34/- in the collection of ticket fare. Subsequently, the 2nd respondent had filed a petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act” for brevity) for approval of the dismissal of the petitioner before the Joint



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Commissioner of Labour, Chennai *vide* Approval Petition No.177 of 2003.

The petitioner filed his detailed counter statement denying the allegations before the Joint Commissioner of Labour and after hearing, the Joint Commissioner of Labour passed order dated 02.12.2005 granting approval for dismissal from service. Aggrieved by the said order, the petitioner filed a writ petition in W.P.(MD) No.2061 of 2007 before this Court. By order dated 21.10.2010, this Court directed the petitioner to raise the dispute under Section 2A(2) of the Act. Accordingly, the petitioner raised an industrial dispute before the Labour Officer (Conciliation) on 15.11.2010, who considered the matter with the Management for reinstatement of the petitioner into service with continuity of service, back wages and all attendant benefits. The said conciliation proceedings ended in failure and the Labour Officer (Conciliation) sent a conciliation failure report on 06.05.2011 under Section 12(4) of the Act in his reference Na.Ka.No. 422/2010, dated 06.05.2011. After getting the failure report of the Labour Officer, Madurai, the petitioner has raised the industrial dispute under Section 2A(2) of the Act before the Labour Court, Madurai in I.D.No. 23/2012 in the month of December, 2011. The Labour Court, Madurai by



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order dated 30.12.2013, passed an award holding that the punishment imposed on the petitioner is not justified and directed the respondents to reinstate the petitioner into service within three months from the date of receipt of the order with continuity of service excluding the period between 19.03.2003 and 14.11.2010 and without back wages and other benefits. The petitioner made a detailed representation on 06.02.2014 requesting the respondents to reinstate him into service along with the copy of the order. The petitioner was reinstated only on 06.05.2015 by the 2nd respondent. Thereafter, the petitioner continued in service.

3. Learned counsel for the petitioner submits that the Labour Court had denied the benefit of continuity of service for the period from 19.03.2003 to 14.11.2010 for a period of 7 years and 7 months in its order dated 30.12.2013 without considering the fact that the period from 19.03.2003 to 14.11.2010 is only the litigation period and there is no deliberate delay on the part of the petitioner.



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4. Learned counsel would submit that the petitioner was dismissed from service on 18.03.2003 and the 2nd respondent filed an approval petition in A.P.No.177/2003 before the competent authority for approval on 18.03.2003, which was disposed only on 02.12.2005 and the said order was received by the petitioner only after a lapse of 6 months. Hence, for the litigation period from 19.03.2003 to 02.12.2005, before the Joint Commissioner of Labour, Chennai, the benefit of continuity of service cannot be denied, as the petitioner is noway responsible for the pendency of approval petition before the Joint Commissioner of Labour. Hence, he sought that the period from 19.03.2003 to 02.12.2005 had to be considered for the purpose of calculation of continuity of service.

5. Learned counsel further contends that immediately the petitioner approached the High Court by filing writ petition in W.P.(MD) No.2061 of 2007 against the approval order and the same was disposed of on 21.10.2010 with liberty to approach the Labour Court under Section 2A(2) of the Act and hence, the period from 2007 to 21.10.2010 is also to be



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considered as litigation period and needs to be considered for continuity of service. He further contends that without any delay, the petitioner has raised the industrial dispute before the Labour Court as per the direction of this Court and the same was disposed of on 30.12.2013 by passing an award. Denial of the benefit of continuity of service for the period from 19.03.2003 to 14.11.2010 is illegal, unjust and sought to allow the writ petition by considering the continuity of service for the period from 19.03.2003 to 14.11.2010.

6. On behalf of the 2nd respondent, a counter affidavit has been filed.

7. It is averred in the said counter affidavit that the petitioner was appointed as Conductor in the 2nd respondent-Corporation and his service was regularised from 11.09.1998. While he was on duty in vehicle No.TN-58-N-0123 on 22.06.2002 in the route Shenkottai to Theni, the Checking Inspectors checked the bus at Subbulapuram at about 01.10 am. The Checking Inspectors checked the invoice, ticket books and verified the



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tickets available with the passengers and found that 26 passengers are having tickets and one passenger, who boarded the bus at Rajapalayam was not having any ticket and on enquiry, the passenger informed that he had paid the fare amount of Rs.34/- to the petitioner, but the petitioner had not given any ticket. Considering that a sum of Rs.34/- had been misappropriated by the petitioner, the Checking Inspectors got a statement from the passenger and the petitioner and recorded necessary endorsements in the invoice and also issued spot memo to the petitioner. Basing on the report of the Checking Inspectors, the 2nd respondent placed the petitioner under suspension pending enquiry with effect from 25.06.2002. A charge memo dated 25.06.2006 was also issued to the petitioner. The petitioner submitted his explanation dated 08.07.2002. As the explanation was not satisfactory, a domestic enquiry was conducted. Basing on the report of the Enquiry Officer, dated 22.11.2002, wherein it is stated that the charges levelled against the petitioner were proved, the 2nd respondent issued a second show cause notice dated 27.01.2003 seeking his explanation. The 2nd respondent, after perusing the explanation of the petitioner dated 06.03.2003 along with his past records of 7 misappropriations, decided to



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terminate the service of the petitioner and accordingly, passed an order on 18.03.2003 to dismiss the petitioner from service.

8. Learned Standing Counsel for the 2nd respondent submits that the petitioner raised an industrial dispute before the Labour Court, Madurai in I.D.No.23/2012 with a delay of 8 years. The Labour Court passed award holding that the punishment imposed on the petitioner was not justified and directed the 2nd respondent to reinstate the petitioner with continuity of service excluding the delay period between 19.03.2003 to 14.11.2010 without back wages and other benefits.

9. Learned Standing Counsel contends that the petitioner approached the Labour Court after a lapse of 8 years to raise the industrial dispute since from the date of dismissal and the petitioner had not afforded any acceptable reason for the delay in filing the industrial dispute. Learned Standing Counsel further contends that the petitioner may be in gainful employment during that period. Therefore, he is not entitled for any back wages. Learned Standing Counsel would submit that the petitioner filed a



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claim petition before the Labour Court, Madurai in C.P.No.34/2014 in I.D.No.23/2012 claiming salary and other benefits from the date of award. The 2nd respondent filed a writ petition in W.P.(MD) No.10747 of 2014 and obtained an order of interim stay on 03.07.2014. Thereafter, the petitioner filed a miscellaneous petition in M.P.(MD) No.2 of 2014 in W.P.(MD) No. 10747 of 2014 and obtained a direction to pay the last drawn wages to the petitioner under Section 17B of the Act on 04.09.2014. In compliance with the interim direction of this Court, the petitioner was paid the last drawn wages of Rs.7,110.25 per month from 03.07.2014 and was reinstated without prejudice to the final order in the writ petition. The petitioner joined duty as per the order of the 2nd respondent dated 06.05.2015. After reinstatement, the petitioner filed another writ petition in W.P.(MD) No. 19902 of 2015 before this Court praying to pay full current wages and other consequential benefits including increments in terms of the award of the Labour Court in I.D.No.23/2012 dated 30.12.2013. The said writ petition was allowed directing the respondents to pay the current wages excluding the period of service between the period from 19.03.2003 to 14.11.2010. This Court, in its order dated 23.11.2015, directed such current wages and



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arrears thereon shall be paid up to November, 2015 on or before 31.12.2015 and from December, 2015 onwards, the current wages shall be paid on or before the 10th of succeeding month. In compliance of the said order, current wages arrears of Rs.66,587.95 was settled to the petitioner.

10. It is further contended by the learned Standing Counsel that the Tamil Nadu State Transport Corporation Employees' Pension Fund Scheme was incorporated with effect from 01.09.1998 and the Tamil Nadu State Transport Corporation Employees' Pension Fund Trust framed a set Rules called the Tamil Nadu State Transport Corporation Employees' Pension Fund Trust Rules. As per the said Rules, the Administrator of the Tamil Nadu State Transport Corporation Employees' Pension Fund Trust is the competent authority to take a decision with regard to the pension matters and the 2nd respondent cannot take decision with regard to payment of pension to the petitioner.

11. It is also contended that since the petitioner had not drawn any wages for the non-employment period from 19.03.2003 to 14.11.2010, and



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there is no employer contribution amount in respect of Provident Fund, as such the said period cannot be considered for pensionary benefits and terminal benefits.

12. This Court gave anxious consideration to the submissions made by the respective counsels and carefully examined the material available on record.

13. Admittedly, the Labour Court, Madurai, i.e., the 1st respondent herein while passing the award dated 30.12.2013, in I.D.No.23/2012, gave categorical finding that the charge of misappropriation was not at all proved in the domestic enquiry and accordingly, held that the punishment imposed on the petitioner is not justified and directed the 2nd respondent to reinstate the petitioner into service within three months from the date of receipt of a copy of the order, with continuity of service excluding the period between 19.03.2003 and 14.11.2010 without back wages and other benefits.



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14. The present writ petition is filed by the petitioner against the award passed by the 1st respondent to the extent of denial of continuity of service for the period from 19.03.2003 to 14.11.2010.

15. On careful perusal of the order dated 30.12.2013 in I.D.No. 23/2012 of the 1st respondent, it appears that though the petitioner mentioned in his petition filed under Section 2A(2) of the Act about the factual position what happened from 18.03.2003, i.e., the date of dismissal of the petitioner from service, the Labour Court failed to consider the same. After dismissal of the petitioner from service, the 2nd respondent has sent an application to the Joint Commissioner of Labour, Chennai under Section 33(2)(b) of the Act for grant of approval. The said approval was granted only on 02.12.2005. Thereafter, aggrieved by the approval, the petitioner filed W.P.(MD) No.2061 of 2007 before this Court. The said writ petition was disposed of on 21.10.2010 with a liberty to the petitioner to raise industrial dispute. Accordingly, the petitioner raised the labour dispute before the Labour Officer, Madurai for conciliation. The said conciliation proceedings ended in failure, as per the failure report dated 06.05.2011.



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Thereafter, the petitioner approached the 1st respondent under Section 2A(2) of the Act.

16. On careful consideration of all these facts, it is clear that there is no delay on the part of the petitioner in approaching the 1st respondent to file I.D.No.23/2012. Though the 1st respondent has considered the entire material available on record to hold that the punishment imposed on the petitioner is not justified, but failed to consider the factual position what happened between 19.03.2003 and 14.11.2010. The Labour Court ought to have considered that period as litigation period and there is no delay on the part of the petitioner in raising the industrial dispute before the 1st respondent.

17. Learned counsel for the petitioner placed reliance on the judgment passed by the Apex Court and this Court in ***Ex.Hav. Satbir Singh v. Chief of the Army Staff, New Delhi & Anr.*** reported in **2013 (1) LLN 328 (SC)**; ***S.Amulnathan v. Managing Director, Tamil Nadu State Transport Corporation (Villupuram) Ltd.*** reported in **2019-II-LLJ-313**



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(Mad); and N.Antony v. Chennai Port Trust, Rep., by its Chairman
reported in **2023-II-LLJ-133 (Mad)**.

18. In **Ex.Hav. Satbir Singh** (*supra*), the Hon'ble Supreme Court at Paragraph No.9, held as extracted hereinunder:

“9. It is not in dispute that in the concluding paragraph, the Division Bench of the High Court in categorical terms set aside the order of termination. The relevant conclusion reads as under:

“Fact remains that he was discharged/terminated from service on the basis of show cause notice. This action is found to be unsustainable. Therefore, we have no hesitation in setting aside the termination order.”

Having found that the discharge/termination is legally unsustainable, we are of the view that the incumbent, namely, the appellant, ought to have been provided relief at least to the extent of counting the intervening period for the purpose of terminal benefits. It is true that during the intervening period, the appellant, admittedly, did not work, in that event, the Division Bench was justified in disallowing the salary for the said period. However, for the terminal benefits, in view of the categorical



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conclusion of the High Court that discharge/termination is bad, ought to have issued a direction for counting the intervening period at least for the purpose of terminal benefits. According to the Division Bench, the conduct of the appellant, namely, securing 4 Red Ink Entries in the service record is the reason for not considering the intervening period even for the purpose of terminal benefits. We hold that the said reasoning adopted by the Division Bench of the High Court cannot be sustained in view of its own authoritative conclusion in setting aside the discharge/termination order.

19. In ***S.Amulnathan*** (*supra*), this Court at Paragraph Nos.8 to 10, held as extracted hereinunder:

“8. Once the Labour Court has taken a conscious decision to set aside the order of dismissal from service on the ground that the charges were not established in the domestic enquiry, the continuity of service should have been ordered automatically. It is not open to the Labour Court to harp on the post misconduct to punish the petitioner, as that would be contrary to the scheme of Industrial Disputes Act.



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9. *As regards the grant of back wages is concerned, it is a discretion vested in the Labour Court to grant full back wages or reduce wages or not to grant any wage at all. The denial of back wages by the Labour Court, in the opinion of this Court, appears to be justified in the circumstances of the case. However, the denial of continuity of service and other attendant benefits cannot be justified in the circumstances of the case. Once the Labour Court has set aside the order of the dismissal on merits, the continuity of service has to necessarily follow reinstatement.*

10. *In the above circumstances, the writ petition is allowed and the award of the Labour Court shall stand modified as under:*

The petitioner / workman is entitled to be reinstated with continuity of service without back wages and the petitioner is also entitled to all attendant benefits, which is the consequence of counting of the entire past service, on his retirement."

20. For the aforementioned reasons and on consideration of the judgment of the Hon'ble Apex Court and the order of this Court stated



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supra, in the considered opinion of this Court, once the Labour Court has gave a categorical finding that the punishment of dismissal from service imposed by the 2nd respondent is unjustified, observing that the charge of misappropriation attempt was not at all proved in the domestic enquiry, the petitioner is entitled for continuity of service automatically.

21. Accordingly, this Writ Petition is allowed and the award of the Labour Court shall stand modified as under:

“The petitioner is entitled to be reinstated with continuity of service without back wages and the petitioner is also entitled to all attendant benefits, which is the consequence of counting of the entire past service on his retirement.”

22. There shall be no order as to costs.

27.09.2023

Note: Issue order copy by 03.10.2023.

NCC : Yes/No

Index : Yes/No

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BATTU DEVANAND, J.

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To

The Presiding Officer,
Labour Court, Madurai.

Pre-delivery Order made in
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27.09.2023