



WP(MD)Nos.12015 of 2014 & 20924 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 25.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)Nos.12015 of 2014 & 20924 of 2018

WP(MD)No.12015 of 2014 :-

K.Kalaichamy

... Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Management of
Tamil Nadu State Transport Corporation(Kumbakonam Divn III) Ltd.,
Now renamed as
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd,
Rep by its General Manager,
Managiri,
Karaikudi.

...Respondents

WP(MD)No.20924 of 2018 :-

K.Kalaichamy

... Petitioner

Vs

1.The Manage of
Tamil Nadu State Transport Corporation(Kumbakonam) Ltd.,
Karaikudi Region,
Rep by its General Manager,
Karaikudi.



WP(MD)Nos.12015 of 2014 & 20924 of 2018

2. The Administrator,
Tamil Nadu State Transport Employees' Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai – 2.

...Respondents

PRAYER in WP(MD) No.12015 of 2014 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, after calling for the records from the first espo relating to the order, dated 28.02.2011 passed in C.P.No.109/08, quash the same insofar as rejecting the petitioner's claim for wages from 05.01.2008, i.e, the date of the award in I.D.No.125/97 to 31.07.2008 and consequently to direct the second respondent to pay the petitioner wages for the period from 05.03.2008 to 31.07.2008 claimed in C.P.No.109/08 filed by the petitioner before the first respondent.

PRAYER in WP(MD) No.13588 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent to pay the petitioner all the terminal benefits, namely EPF Employee's contribution, Gratuity and Encashment of Leave, Employees Social Security Scheme Benefit, Refundable deposit and etc., forthwith together with 18% interest per annum, and further directing the respondents to pay the petitioner forthwith pension and commutation of pension, along with pension payable for the period from the month of May 2014 under TNSTCE



WP(MD)Nos.12015 of 2014 & 20924 of 2018

pension Fund Rules, together with 18 % interest per annum, within a time frame, as may be fixed by this Court.

For Petitioner : Mr.S.Arunachalam
For R2 : Mr.A.Kannan
(in WP(MD) No.12015 of 2014)

For Petitioner : Mr.S.Arunachalam
For R1 : Mr.A.Kannan
For R2 : Mr.S.C.Herold Singh
(in WP(MD) No.20924 of 2018)

COMMON ORDER

These writ petitions are filed by one Kalaichamy, who was working as a driver in Tamil Nadu State Transport Corporation (Kumbakonam) Ltd, Karaikudi as against the order passed by the Labour Court in C.P.No.109 of 2008 and also for a Mandamus, directing the Management to settle all his terminal and pension benefits.

2. Since the parties in these two writ petitions are one and the same and the issues are arising out of the award passed in I.D.No.125 of 1997, these writ petitions are taken up together and disposed of by this common order.



WP(MD)Nos.12015 of 2014 & 20924 of 2018

WEB COPY

3.The brief facts, which are required for disposal of these writ petitions are as under:-

The petitioner was working as a driver in the respondent Transport Corporation joined in service on 25.05.1985 and his service was regularized in the year 1996. He was suspended from service by the first respondent on 20.09.1995 that he was un-authorisdlly absent for certain period. As against the dismissal order, the petitioner has raised an industrial dispute before the Labour Court, Madurai in ID No.125 of 1997 and the same was partly allowed by an award, dated 05.01.2008, with a direction to the respondent Management to re-instate the petitioner into service with continuity of service, within a period of two months from the date of receipt of a copy of that order and rejected the request of the petitioner for back-wages. As against the award passed by the Labour Court in ID No.125 of 1997, neither the petitioner employee nor the Management of the transport Corporation have preferred any appeal and therefore, the award passed by the Labour Court in ID No.125 of 1997 becomes final. According to the petitioner, though he approached the respondent Management to reinstate him into service, they have not



WP(MD)Nos.12015 of 2014 & 20924 of 2018

considered the same. Therefore, the petitioner has filed a claim petition in C.P.No.109 of 2008, seeking salary for the period from 05.01.2008 to 30.10.2008 and it was partly allowed that this petitioner is entitled for salary after implementation of the award and the award would be implemented after a period of 30 days from the date of notification in the official Gazette. Therefore, the Labour Court has passed an award directing the Management to pay salary for the subsequent period from August 2008 to till October 2008. The petitioner has approached this Court that he is entitled for salary from March 2008.

4.Pending this writ petition, the petitioner was allowed to retire from service on superannuation on 30.04.2014. After the retirement, the retirement benefits have not been disbursed to this petitioner and therefore, he has filed WP(MD) No.20924 of 2018, seeking a Mandamus for disbursement of retirement benefits due to him together with 18% interest and also for the pensionary benefits.

5.The learned counsel appearing for the petitioner submits that the Labour Court has passed an award for re-instatement of the petitioner



WP(MD)Nos.12015 of 2014 & 20924 of 2018

with continuity of service. According to the learned counsel, though the petitioner is entitled for salary after the award, he was not provided an employment and salary by the respondent Management. Therefore, he filed a computation petition in C.P.No.109 of 2008 and the same was partly allowed without appreciating that the order has to be implemented within a period of two months. With regard to the terminal benefits, the learned counsel submits that the petitioner was allowed to retire on 30.04.2014 and therefore, he is entitled for all the terminal benefits. Though the Labour Court has awarded continuity of service in ID No.125 of 2018, the Management has not provided employment to the petitioner, imposing condition to withdraw the writ petition filed by him in WP(MD) No.12015 of 2014. Therefore, considering the award passed in I.D.No.125 of 1997, he is entitled for continuity of service, however, it was denied by the Management. The learned counsel further submits that since the petitioner is bed-ridden at present, a suitable direction may be issued to the respondent Management to disburse his salary as well as the retirement benefits.



WP(MD)Nos.12015 of 2014 & 20924 of 2018

6.The learned counsel appearing for the respondent submits that the petitioner has not joined duty after the award passed in I.D.No.125 of 1997 and therefore, he is not entitled for computation amount, as claimed by him and thereby, he is also not entitled for the pension benefits. According to the learned counsel for the Management, the petitioner has served only for a period of 6 years 9 months and 9 days and he did not join duty after the award, dated 05.01.2008. He further submits that the petitioner has not approached the Management after the date of retirement and has not submitted Form 19, as required under the Pension Rules for payment of terminal benefits. Since the petitioner has not joined duty after the award, he is not entitled for the terminal benefits also.

7.This Court considered the rival submissions made and also perused the materials placed on record.

8.The petitioner was dismissed from service on 20.09.1995 that he was unauthorisidly absent for certain period. However, he was dismissed without conducting enquiry and the same was considered by the Labour Court in ID No.125 of 1997 and the Labour Court has set aside the



WP(MD)Nos.12015 of 2014 & 20924 of 2018

order of punishment/dismissal and ordered for re-instatement with continuity of service, within a period of two months from the date of receipt of a copy of that award. The Management claims that the petitioner has not come forward to join duty after the award. On the side of the petitioner, it is claimed that though the petitioner has approached the respondent Management, he was not considered for employment. The Department has not issued any show cause notice for his alleged subsequent absent, after the date of award and therefore, the contention of the Management that this petitioner did not join duty after the award cannot be accepted. Since the Management has not inducted him in service, the petitioner has filed a computation application before the Labour Court in C.P.No.109 of 2008 on 03.11.2008, wherein the Labour Court found that the petitioner is entitled for a salary from the month of August 2008 to October 2008 and directed the Management to pay three months salary from August 2008 to October 2008. This order passed in C.P.No.109 of 2008 was not challenged by the Management. The reasoning given by the Labour Court is that as per Section 17A of the Industrial Dispute Act, the award would come into force from 30 days after the notification. In this case, the Labour Court has not discussed



WP(MD)Nos.12015 of 2014 & 20924 of 2018

about the date, on which, the award has to be notified. However, the Labour court without giving any reasonings found that the petitioner is entitled for salary with effect from the month of August 2008.

9.It would be relevant to extract the provision under Section 17A of the Industrial Disputes Act, 1947, for better understanding of the right of the petitioner.

(1)An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17

Provided that-

(a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or

(b)if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the



WP(MD)Nos.12015 of 2014 & 20924 of 2018

after the period of November 2008, the respondent shall calculate the benefits for a minimum period of service, which is eligible for pension.

Considering the submission made by the learned counsel for the petitioner that the petitioner is in death bed and considering the fact that these writ petitions are pending from the year 2014 and 2018 respectively, these writ petitions are allowed with a direction to the Management to calculate and pay the retirement benefits at the rate of 6% interest and the appropriate back-wages to this petitioner from March 2008 till November 2011, within a period of four weeks from the date of receipt of a copy of this order. No costs.

25.09.2024

NCC :Yes/No

Index :Yes/No

Internet : Yes

vrn



WP(MD)Nos.12015 of 2014 & 20924 of 2018

WEB COPY

- To
- 1.The Presiding Officer,
Labour Court,
Madurai.
 - 2.The Management of
Tamil Nadu State Transport Corporation(Kumbakonam Divn III) Ltd.,
Now renamed as
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd,
Rep by its General Manager,
Managiri,
Karaikudi.
 - 3.The Administrator,
Tamil Nadu State Transport Employees' Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai – 2.



WEB COPY



WP(MD)Nos.12015 of 2014 & 20924 of 2018

B.PUGALENDHI,J.

vrn

Common Order made in
WP(MD)Nos.12015 of 2014 & 20924 of 2018

25.09.2024