



W.P.Nos.2326, 2013 & 25518 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.2326, 2013 & 25518 of 2021

and

W.M.P.No.26946, 2643 & 2278 of 2021

The Management,
Tamil Nadu Government Transport Corporation,
(Kovai Division) Kovai Ltd.,
37, Mettupalayam Road,
Coimbatore – 641 043.

...Petitioner in all W.P.s

Vs.

The Secretary
Kovai Arasu Pokkuvarathu Oozhiyar Sangam(CITU),
No.109, Park Street, Kattur,
Coimbatore – 641 009.

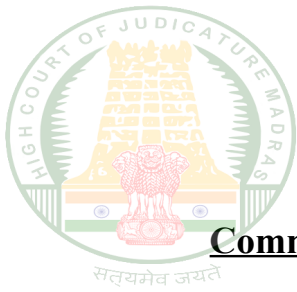
...Respondent in W.P.No.2326 of 2021

The Secretary
Nethaji Pokkuvarathu Thozhilalargal PathukappuThozhilsangam
94, Karuparayan Kovil Street, Puliyakulam,
Coimbatore – 641 045.

...Respondent in W.P.No.2013 of 2021

1. The Secretary,
Tamilnadu Arasu Pookuvarathu Kazhaga Ootunar Nadathunar,
Thozhilalar Thozhil Sangam.

2. A.Ayyappan ...Respondents 1 & 2 in W.P.No.25518 of 2021



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Common Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records I.D.Nos.183, 110 & 113 of 2017 on the file of Principal Labour Court, Coimbatore dated 21.01.2020 and quash the same.

For Petitioner(s) in
all W.P.s : Mr.A.Sundaravadhanan

For Respondent(s)
in W.P.Nos.2326
& 25518 of 2021 : Mr.V.Ajoy Khose

For Respondent(s)
in W.P.Nos.2013
of 2021 : Mr.S.Saravanan

COMMON ORDER

Since the issue involved in the present writ petitions are one and the same, they are disposed of by way of this common order.

2. The respective impugned award dated 21.01.2020 passed in I.D.Nos.183, 110 & 113 of 2017 by the Principal Labour Court, Coimbatore, allowing the claim of the workmen and directing the petitioner to pay the review benefits is assailed by filing the present writ petitions.



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3. When a similar issue was raised before this Court, this Court in W.P.No.2358 of 2019, etc. Batch dated 14.07.2023 has set aside the award passed by the Principal Labour Court, Coimbatore and allowed the said writ petitions.

4. The relevant paragraph is as under:

18. The undisputed facts are that the workmen are 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 each 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.

19. A perusal of the order passed by the 2nd 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



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not been placed before the Court for appreciation. The said finding recorded by the 2nd 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 2nd respondent wanted to peruse the Rules, direction should have been 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.

20. Be that as it may. There is no quarrel about the fact that the workmen concerned have suffered punishment during various periods during the period of computation of qualifying service and they have also been on loss of pay for certain lengths of time. A tabulated statement in this regard has been placed before this Court, which is not disputed by the learned counsel appearing for the workmen. 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.

21. 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



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postponed, the workmen should be put on notice about the same. However, it is to be pointed out that the workmen have not been put on notice about the postponement of their review benefit on account of the reason of their sufferance of punishment and loss of pay. However, 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 workmen from a particular time onwards for certain reasons so that the workmen would be abreast of the benefit which they would be getting. Though the act of the petitioner in not putting the workmen 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 workmen otherwise, as even the communication to the workmen is only an information and it does not attract any objection from the workmen, which otherwise they are entitled to give at any point of time.

22. 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



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on the basis of performance of the individual with reference to the norms and the grant of benefit shall not be automatic. The review 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.

23. 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.

24. 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 workmen, irrespective of their sufferance of punishment or loss of pay, they should be granted the review benefit on completion of the period prescribed under the Settlement and no part of the period would stand excluded.



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25. *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 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



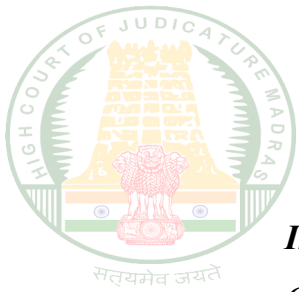
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forbidding the promotion of a State employee during the currency of the penalty results in a second punishment, is not correct. There is only one punishment visiting the respondent as a result of the conclusion reached in the disciplinary proceeding 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 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 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."

*26. 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***



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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 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."

27. It is not the case of the workmen that they have not suffered any punishment during the period under review. However, their 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.



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28. *Further it is also not the case of the workmen that they were 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 2nd respondent, on the foundation of the above findings cannot be allowed to survive. Further, the decisions relied on by the 2nd respondent were totally irrelevant to the facts in issue and cannot be pressed into service.*

29. *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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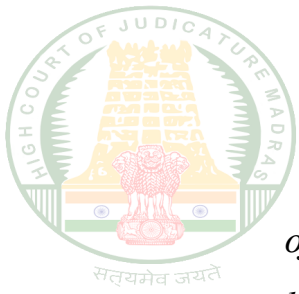
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postponed for the period of six months. The petitioner contends vehemently that the recommendation of the Committee for the review on 01.05.2002 has not been given which automatically would show that the petitioner was entitled to a review for 01.05.2002. 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.”

30. The case of the workmen herein not only being identical, but is squarely covered by the aforesaid decision. Further, the tabulated statement showing the manner in which the qualifying service has been computed in respect of each workman also reveals that it has been done in the manner as provided for in the Service Rules.

31. As already aforesaid, the only procedural irregularity committed by the petitioner is the non-service



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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 workmen 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.

32. For the reasons aforesaid, the award passed by the 2nd respondent is set aside and all the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

5. Following the same, this Court set aside the respective impugned orders dated 21.01.2020 passed in I.D.Nos.183, 110 & 113 of 2017 by the Principal Labour Court, Coimbatore. Accordingly, the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

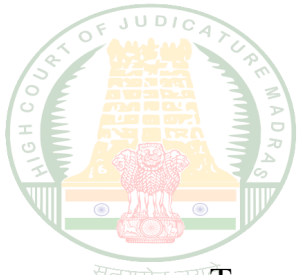
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Speaking Order : Yes/ No

Index : Yes/ No

NCC : Yes/ No



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To
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Principal Labour Court, Coimbatore



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M.DHANDAPANI., J.

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