

W.P. No. 33901 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 33901 of 2018

S. Jeyachandran

... Petitioner

Vs.

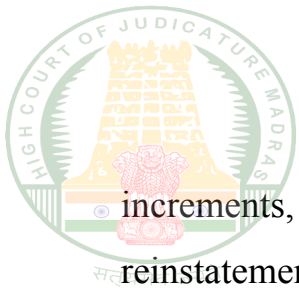
**1.Tamil Nadu State Transport Corporation (Salem) Ltd.,
Represented by its Managing Director,
No.12, Ramakrishna Road,
Salem – 7.**

**2.The General Manager,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Salem Region,
No.12, Ramakrishna Road,
Salem – 7.**

**3.Tamil Nadu State Transport Corporations Employees'
Pension Trust,
Represented by its Administrator,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai – 2.**

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration, declaring that the action of the respondents in giving the petitioner reinstatement as a fresh entrant as illegal and unconstitutional and consequently direct the respondents to grant him notional fixation of pay with annual



increments, wage revision benefits, review benefits etc., from the date of reinstatement to the date of superannuation and count his service from the date of enrollment to provident fund to the date of his superannuation as qualifying service for pension and to sanction him monthly pension as per and under the TNSTCE Pension Scheme, 1998 w.e.f 01.08.2018, with arrears and all other consequential benefits, award costs and thus render justice.

For Petitioner : Ms. H. Nandhini
for Mr. R. Krishnaswamy

For Respondents : Mr. M. Aswin,
Standing Counsel

ORDER

The facts of the case in a nutshell, as herein under: -

The petitioner was recruited to the post of Conductor in the respondent Corporation on 22.09.1997 on regular basis. He was allotted duty in Namakkal moffusil branch. He was enrolled as a member to the Provident Fund with effect from 22.09.1997. The respondents deducted PF contribution from the salary of the petitioner every month. The petitioner was dismissed from service by an order dated 03.05.2000. The Labour Court, Salem by an Award dated 09.08.2004 in I.D. No.113 of 2001 reinstated him with continuity of service. In 2005, while the petitioner was reinstated into service, the respondents appointed him as a fresh entrant depriving the continuity of service as ordered by the Labour Court. In the year 2003, the service in transport corporation became non pensionable, as the respondents appointed the petitioner as a fresh entrant contrary to the award of the Labour Court,



the petitioner deprived of his valuable right of pension. Aggrieved by the same, the present writ petition is filed.

2. A counter affidavit has been filed on behalf of the respondents, wherein it is stated that the petitioner was dismissed from service on 03.05.2000 for the charges of various misconducts during the service period. Consequent to the dismissal, the petitioner's provident fund account was closed by settlement of employee contribution of Rs.12,528/- and employer contribution of Rs.3,878/-, totally Rs.16,406 to the petitioner. After receiving the provident fund amount, the petitioner raised I.D.No.113 of 2001 in the Labour Court, Salem. The Labour Court has ordered in I.D.No.113 of 2001 dated 09.08.2004 to reinstate the petitioner with continuity of service and without any backwages and other monetary benefits. Since the Corporation had settled the entire provident fund amount and closed his provident fund account in view of the dismissal on 03.05.2000, the Corporation has entered into negotiation with the petitioner under Section 18(1) of Industrial Disputes Act, 1947, so as to comply the orders passed by the Labour Court. As per the said settlement, the petitioner is not entitled for continuity of service and his past service cannot be counted for any purpose.



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2.1. It is further averred that, based on the agreement made under Section 18(1) of Industrial Disputes Act, 1947, the petitioner was appointed as a fresh Conductor vide order dated 25.05.2005. The Corporation has effected all the benefits to the petitioner with respect to the appointment order dated 25.05.2005 based on the award of I.D. No.113 of 2001 and the settlement made under Section 18(1) of Industrial Disputes Act, 1947. Hence, the petitioner is no way to claim any other benefits beyond the said agreement.

2.2. It is further stated in the counter that, the petitioner had retired from service on 31.07.2018 on reducing the age of superannuation. During his service period from 01.06.2005 to till retirement, he did not raise any claims in this regard before the competent authority. Though the petitioner is not a member in the TNSTC EPF Trust under 1998 pension scheme, he is not eligible to claim after his retirement and it shall be hit by delay and latches.

3. Learned counsel for the petitioner would submit that, the respondents 2 and 3 have no power, jurisdiction and authority either to nullify the judicial / quasi-judicial order or to modify the same. He further contends that when there was no settlement giving up continuity of service, the continuity of service ordered by the Labour Court cannot be taken away by the respondents 1 and 2 unilaterally on their



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own. Learned counsel further submits that the petitioner is under the hope and impression that the respondents would bring him under the TNSTC Pension Scheme, 1998. But only after receiving the legal notice sent by the petitioner on 15.12.2017, the respondents informed him that they would not sanction pension under 1998 Pension Scheme. If the petitioner is granted continuity of service as per the Labour Court award, instead of appointing as fresh recruitee, the petitioner will get pension under Pension Scheme, 1998.

4. Learned Standing Counsel for the respondents-Corporation would submit that, though the writ petitioner obtained an order of reinstatement with continuity of service, but without backwages from the Labour Court, Salem, he agreed to voluntarily forfeit the benefit available to him under the said award by entering into settlement with the respondents under Section 18(1) of the Industrial Disputes Act, 1947. Learned Standing Counsel would further submit that the person who received benefit under the settlement cannot question the same.

5. Heard the respective counsel and perused the material available on record.

6. The facts are not in dispute. The petitioner was dismissed from service by an order dated 03.05.2000. But the order of dismissal dated 03.05.2000 was set aside by award dated 09.08.2004 in I.D. No. 113 of 2001 by the Labour Court, Salem. The



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Labour Court, Salem directed the respondents Corporation to reinstate the petitioner with continuity of service. This award has not been challenged by the Management.

Therefore, the award has become final.

7. The only issue to be decided herein is, whether it is open to the Management to bye-pass the award passed by the Labour Court by entering into the settlement under Section 18(1) of the Industrial Disputes Act, 1947?

8. Infact, the issue involved in the present writ petition is no longer *res integra*. The learned counsel for the petitioner relied on the order of this Court in ***K. Karuppiah vs. The General Manager, Tamil Nadu State Transport Corporation and Others*** reported in ***2017 SCC OnLine Mad 32321***.

9. On perusal of the said order, it is clear that, the learned Single Judge of this Court, while dealing with an identical matter, took a view that the Management acted unfairly in bye-passing the directive set out in the award of the Labour Court which was clearly binding on it by entering into a settlement with the workman. The relevant paragraphs of the order stated supra, are extracted herein under: -

“7. Let us take the case of a civil claim. The decree of any kind may be adjusted in whole or in part to the satisfaction of the decree holder. If the decree holder certifies such adjustment to the Court



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whose duty is to execute the decrees, the Court shall record the same accordingly. This is the statutory scheme set out under Order 21 of Civil Procedure Code. As per Section 320 of Criminal Procedure Code, certain offences are compoundable between the parties and certain offences are compoundable with the permission of the Court. But, such freedom of contract is not available in all cases. One can come across statutory provisions which prohibit contracting out.

8. For instance, Section 17 of the Employee's Compensation Act, 1923 states that "Any contract or agreement whether made before or after the commencement of this Act, whereby a [employee] relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void insofar as it purports to remove or reduce the liability of any person to pay compensation under this Act." There is a public policy behind such provisions. Where the parties to an agreement are not having an equal bargaining power, the Court will not hesitate to strike down the unfair and unreasonable terms found in the agreement between such parties. One example of such intervention is found in the decision of this Court reported in 2000 (2) LW 460 (S. Pappa v. Government of Tamil Nadu).

9. In this case, the writ petitioner was out of employment right from 2003. He obtained an order for reinstatement with continuity of service after a 10 year long battle. Obviously, there had been a further challenge in writ jurisdiction, the writ petitioner herein would have found it difficult to contest. Therefore, out of sheer desperation he had the agreement on the dotted lines. But the management could not have taken advantage of the weak economic position of the writ petitioner.



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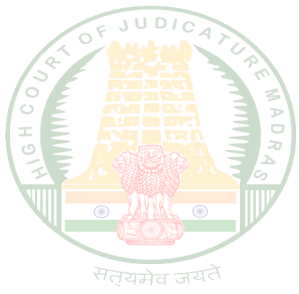
These are matters of principle. If the Labour Court had passed an award in favour of the workman, the management must comply with the award in letter and spirit. If the management was of the view that the award was not proper, it should challenge the same by filing a writ petition. These are the two courses open to it. It is not open to the management to overreach the jurisdiction of the Labour Court in this manner.

10. Section 18(3) of the Industrial Dispute Act, 1947 states that an award of a Labour Court which has become enforceable shall be binding on all the parties to the Industrial dispute. This Court is therefore of the view that the management acted unfairly in bypassing the directive set out in the award of the Labour Court which was clearly binding on it by entering into a settlement with the workman.”

10. Admittedly, the fact and circumstances in both cases are identical. As such, by following the said order, this Court is of the opinion that the petitioner is entitled for the relief sought in this writ petition.

11. Accordingly, this Writ Petition is allowed with the following direction: -

i) The order dated 01.06.2005, appointing the petitioner as fresh entrant is hereby quashed.



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ii) The respondents are directed to confirm all the benefits available to the petitioner, in terms of the award dated 09.08.2004 in I.D.No.113 of 2001 on the file of the Labour Court, Salem.

12. There shall be no order as to costs.

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Index :Yes/No

Neutral Citation :Yes/No

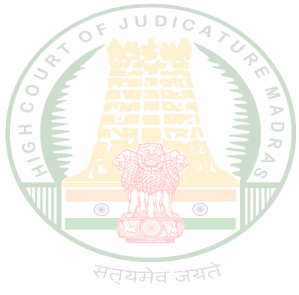
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To

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