



W.P.(MD)No.25865 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	29.01.2025
Pronounced on	06.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.25865 of 2023

A.Rajan

Vs

... Petitioner

1. The Management of Tamil Nadu
State Transport Corporation,
(Kumbakonam) Ltd.,
Represented by its Managing Director,
Kumbakonam.
2. The General Manager,
The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Trichy Region,
Trichy.
3. The Administrator,
The Tamil Nadu Transport Corporation
Employees Pension Fund Trust,
Thiruvallurvar Illam,
Pallavan Salai,
Chennai - 600 002.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned orders passed by the 2nd respondent in Ref No.TNSTC/KUM/TRY/DS/SM1/13287/2022 dated 18.11.2022 and 07.10.2023 quash the same and consequently directing the respondents to fix petitioner's pay correctly at the appropriate stage in the revised scale of pay of Rs.5,200-20,200+Grade Pay of Rs.1,900 which is applicable to the post of Senior Driver (Driver Level II) which was existing as on the date of his reinstatement (01.07.2012) and to give him further corresponding pay fixation and revision of his pay with all consequential benefits including difference in salary from the date of his reinstatement and further directing the respondents to count petitioner's service from the date of appointment to the date of dismissal (19.02.1991 to 06.06.2001) along with his service rendered by him from date of reinstatement i.e., from 01.07.2012 to till the date of his superannuation for the purposes of pension, gratuity and all other terminal benefits.

For Petitioner	: Mr.A.Rahul
For R1 and R2	: Mr.K.Ramaiah Standing Counsel
For R3	: Mr.S.C.Herold Singh Standing Counsel



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ORDER

The instant writ petition has been filed by a retired driver of the respondent transport corporation, challenging the order passed by the respondent on 18.11.2022 and 07.10.2023 rejecting the request of the petitioner for granting grade pay of Rs.1900/- to the writ petitioner with effect from 01.07.2012 and also rejecting the request of the petitioner for counting the services from the date of appointment to the date of dismissal.

(A) The facts leading to the filing of this writ petition are as follows:-

2. While the petitioner herein was working as a driver, he was placed under suspension on 09.05.2001 for being involved in a road accident. The petitioner was issued with a charge memo on 18.07.2001 and after conclusion of the departmental enquiry, he was dismissed from service on 06.09.2001. Challenging the order of dismissal, the petitioner filed I.D.No.171 of 2002 before the Labour Court, Trichy. The Labour Court passed an award on 14.06.2012 setting side the order of dismissal and directing the corporation to reinstate the petitioner into service with effect



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from 01.07.2012 without backwages subject to the modified punishment of stoppage of increment for a period of 5 years with cumulative effect from the date of reinstatement. On 23.10.2012, the petitioner and the respondent transport corporation entered into a settlement under Section 18(1) of the Industrial Disputes Act. It was agreed as follows-

- (a) The corporation has agreed to reinstate the petitioner with effect from 01.07.2012 without continuity of service and without backwages and to implement the punishment of stoppage of increment for a period of next five years with cumulative effect;
- (b) The petitioner would be reinstated on the salary which he was receiving on the date of dismissal;
- (c) The petitioner would not claim any salary for the period between the award and the date of reinstatement;
- (d) The petitioner would not approach the court for releasing the benefits arising out of the agreement.



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3. Based upon the above said settlement, an appointment order was issued to the writ petitioner on 01.11.2012, reinstating the petitioner with effect from 01.07.2012 on the salary which he was receiving on the date of dismissal. The other clauses found in the 18(1) settlement were also incorporated in the appointment order. On 30.01.2013, the transport corporation issued an order fixing the pay scale of the writ petitioner at 5200 - 20,200 + 1700 grade pay. The Petitioner had attained superannuation on 28.02.2024. On 16.03.2022, the petitioner has sent a representation to the respondents to refix his pay correctly at the appropriate stage in the revised scale of senior driver and give him further pay fixation revision with all consequential benefits. The petitioner has further requested to count his services from the date of appointment to the date of dismissal along with his services from the date of reinstatement for the purposes of pension.

4. Since the said representation was not considered, the petitioner had filed W.P.(MD)No.13287 of 2022, seeking a mandamus to grant the above said reliefs. This Court by an order dated 27.06.2022 had directed the respondents to consider the representation of the petitioner and pass orders



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on merits within a period of 8 weeks. In compliance of the orders of this Court, the Impugned Order dated 18.11.2022 was passed rejecting the request of the writ petitioner citing 18(1) Settlement. On 07.10.2023, a revised impugned order was issued. Both these orders are under challenged in the present writ petition.

(B) Contentions of the learned counsel appearing on either side are as follows:-

5. The learned counsel appearing for the petitioner herein had contended that once an award is passed by the Labour Court, such an award cannot be set aside or a settlement cannot override the award of the Labour Court.

6. The learned counsel appearing for the petitioner further contended that even assuming that the said settlement is valid, under the said settlement, the petitioner has given up his rights relating to the dismissal period only. Therefore, the respondent corporation should count the services between 19.02.1991 and 06.09.2001 for the purposes of pension.



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7. The learned counsel appearing for the petitioner has relied upon the judgement of this Court in W.P.No.3 of 2018 dated 23.06.2022 between **C.S.Vijayakumar vs. M/s.State Express Transport Corporation Ltd., Rep. by its Managing Director, Chennai.**

8. The learned counsel appearing for the petitioner has also relied upon the judgement of the Hon'ble Supreme Court in the case of **Madan Mohan Pathak and Another vs. Union of India and Others** reported in AIR 1978 SC 803, wherein the Hon'ble Supreme Court has held that the parliament cannot pass an Act, overriding the judgement of the High Court or the binding character of the writ order.

9. The learned counsel appearing for the petitioner further relied upon the judgement of the Hon'ble Division Bench of our High Court in W.A.(MD)No.1270 of 2020 between **The State Express Transport Corporation (Tamilnadu) Ltd., Chennai and Others vs. G.Senthil and Others**, wherein this Court has held that a settlement under Section 18(1) cannot nullify a judgement which has been rendered interpreting the Statutory Rules and Regulations, which are applicable to the Organization.



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10. The learned counsel appearing for the petitioner herein had contended that when the petitioner was dismissed from service he was a Driver Level (II) and therefore, when he is reinstated, he would automatically get reinstated only to the said cadre. He cannot be reinstated in a cadre which is lower than the cadre which was occupied by him at the time of his dismissal. Hence, he had contended that the pay scales which are commensurate with the Driver Level (II) should have been fixed to the writ petitioner when he was reinstated. According to him he should have been granted grade pay of Rs.1900/-. Hence he prayed for allowing the writ petition.

11. Per contra, learned Standing Counsel appearing for the respondents had contended that the petitioner has voluntarily entered into settlement under Section 18(1) of the Industrial Disputes Act within few weeks from the date of award. The petitioner has given up his right of continuity of service and the respondent corporation have given up their right to challenge the award. In case, if the petitioner had not agreed for giving up his right to continuity of service, the corporation would have challenged the award. Now the said opportunity is lost to the respondent management.



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WEB COPY 12. The learned Standing Counsel appearing for the respondents had contended that when both the parties have given up their respective rights and a settlement has been arrived at voluntarily by the parties without any allegation of coercion or undue influence, the said settlement should be protected by the Court and one of the parties cannot be permitted to wriggle out of the said settlement.

13. The learned Standing Counsel appearing for the respondents had further contended that the petitioner has accepted the settlement dated 23.10.2012 and he attained superannuation on 28.02.2024. The petitioner raised dispute with regard to the settlement only after his retirement. Therefore, he is estopped from making such a claim.

14. That apart, learned Standing Counsel appearing for the respondents contended that the petitioner was reappointed as a fresh candidate and therefore, whatever salary that was applicable to an entry level driver was granted to him.



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15. The learned Standing Counsel appearing for the respondents had relied upon the decision of the Hon'ble Division Bench of our High Court in W.A.(MD)No.666 of 2018 dated 24.06.2024 between **The General Manager, The Tamil Nadu State Transport Corporation (Madurai) Ltd., and Others** vs. **K.Karuppiah** and contended that where a settlement is reached under Section 18(1) of the Industrial Disputes Act, after the Award of the Labour Court and the employee is reinstated as a fresh recruit, he cannot challenge the same thereafter. Hence, he prayed for dismissal of the writ petition.

16. I have carefully considered the submissions on either side and perused the materials available on records.

(C) Discussion:-

18. The prayer sought for in the writ petition is two-fold.

- (a) To count the services between 19.02.1991 to 06.09.2001 along with services rendered after 01.07.2012 for the purposes of pension and terminal benefits;
- (b) To fix the correct pay at the appropriate stage in the revised pay scale of Rs.5200 - Rs.20,000 + grade pay of Rs.1,900 which is applicable to the post of senior driver (Driver Level II) as on 01.07.2012.



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WEB COPY 17. In the present case, the Labour Court has passed an award setting aside the order of dismissal and has issued a direction to reinstate the petitioner without backwages and continuity of service. The Labour Court has modified the punishment of dismissal as postponement of increment for a period of 5 years with cumulative effect from the date of reinstatement. This award has been passed on 14.06.2012. The petitioner and the management have entered into a 18(1) settlement on 23.10.2012.

18. Under 18(1) settlement, the management has accepted the award with regard to reinstatement with effect from 01.07.2022 and also the modified punishment of stoppage of increment. The petitioner herein has given up his right to continuity of service. In view of this settlement, the management has not preferred any writ petition challenging the award. There is no allegation on the part of the writ petitioner that such a settlement was reached due to any coercion or threat on the part of the management.



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WEB COPY 19. In the prayer, the petitioner has prayed for counting the past services prior to the date of his dismissal. This prayer can be granted only if the award of Labour Court relating to continuity of service is accepted by the management.

20. The petitioner herein had relied upon the judgement of the learned Single Judge of this Court in W.P.No.3 of 2018 dated 23.06.2022, wherein this Court has held that a settlement under Section 18(1) of the Act cannot override a judicial pronouncement. He has also relied upon the judgement of the Hon"ble Division Bench of this Court in W.A(MD)No.1270 of 2020 dated 15.06.2021, wherein it is held that a settlement cannot be entered into to nullify a judgement which was rendered interpreting the statutory rules and regulations.

21. A perusal of the said judgement of the Hon'ble Division Bench in W.A(MD)No.1270 of 2020 reveals that this Court has held that the management would not be entitled to recover the unimplemented portion of increment cut without any service regulation or certified standing order to



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that effect. After the orders of this Court, the management and the workmen have entered into a settlement under Section 12(3) of the Act, wherein it was agreed that the corporation is entitled to recover the said amounts as per the common service rules and certified standing orders. The Hon'ble Division Bench found that without amending the common service rules or the certified standing orders, merely by entering into 12(3) settlement, the management cannot recover the unimplemented increment cut. Only in the light of the said facts, such a finding was rendered by the Hon'ble Division Bench. Therefore, it cannot be contended that no point of time settlement can be entered into given up certain rights arisen out of the labour court.

22. The Hon'ble Supreme Court in a judgement reported in AIR 1964 SC 160 between **Sirsilk Ltd. and Another vs. Government of Andhra Pradesh and Another** had an occasion to consider a similar issue. After an award was passed by the Industrial Tribunal it was sent to the Government for publication in the gazette. Before it could be published in the gazette, the parties to the dispute entered into a settlement under Section 18(1) of the Industrial Disputes Act. The parties had approached the Court seeking a direction not to publish the award. The High Court had dismissed the writ



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petition. The Hon'ble Supreme Court in paragraph 7 of the judgement has observed as follows:-

"7. The matter may be looked at in another way. The reference to the Tribunal is for the purpose of resolving the dispute that may have arisen between employers and their workmen. Where a settlement is arrived at between the parties to a dispute before the Tribunal after the award has been submitted to Government but before its publication, there is in fact no dispute left to be resolved by the publication of the award. In such a case. the award sent to Government may very well be considered to have become infructuous and so the Government should refrain from publishing such an award because no dispute remains to be resolved by it."

23. Therefore, in view of the observations of the Hon'ble Supreme Court, it is clear that the parties are always at liberty to enter into Settlement under Section 18(1) of the Industrial Disputes Act even after an award is passed by the Labour Court/Industrial Tribunal. As long as the settlement is voluntary and there is no allegation of coercion, the said settlement should be binding upon the parties concerned.

24. In the present case, the petitioner has given up his right of continuity of service and the respondent management has given up their right to challenge the award of the Labour Court granting reinstatement of service



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on the modification of punishment. Therefore, it is clear that both the parties have given up certain rights of their side and derived benefits out of the said settlement. In such circumstances, the petitioner cannot resile back from the settlement and seek to count the past services prior to dismissal for the purposes of terminal and pensionary benefits.

25. The second prayer in the writ petition is for fixation of prior pay scale to the writ petition on his reinstatement on 01.07.2012.

26. A perusal of 18(1) settlement dated 23.10.2012 and the appointment order dated 01.11.2012 clearly indicate that the petitioner is reinstated in service on the pay scale which he was receiving on the date of dismissal. There is no reference what so ever to the effect that the petitioner is appointed as a fresh candidate. A perusal of the service records reveal that on the date of dismissal, the petitioner was receiving the pay scale of 3,410 – 75 – 5510. This pay scale was revised with effect from 01.09.2003 based upon the settlement reached between the management and the trade union. The applicable pay scales from 01.09.2003 is 4440-75-6540. This pay scale was modified with effect from 01.09.2007 as 5455-115-8905. This pay scale



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was further modified with effect from 01.09.2010 as 5200-20200 + 1900 grade pay. When the 18(1) statement reflects that the petitioner is appointed on the pay scale prevailing on the date of dismissal, the petitioner has to be reinstated in service on 01.07.2012 only in the pay scale of 5200-20200 with 1900 grade pay. However, the Grade Pay was fixed at Rs.1,700/- treating him as a fresh entrant and the terminal benefits and the monetary benefits have been disbursed. When there is no reference whatsoever either in the 18(1) settlement or in the re-appointment order to the effect that the petitioner is appointed as a fresh candidate, but on the other hand there is a specific reference that the petitioner would be entitled to receive the pay scale that was prevailing on the date of his dismissal. Therefore, the pay scale fixed by the respondent transport corporation as Rs.1,700/- as grade pay is not legally sustainable.

27. In the Hon'ble Division Bench Judgement referred to by the respondent transport corporation in W.A.(MD)No.666 of 2018 dated 24.06.2024, there is a specific reference that the employee therein was inducted into service as a fresh recruit. Therefore, the said decision is not applicable to the facts of the present case.



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(D) Result:-

WEB COPY 28. In view of the above said deliberations, this Court is inclined to pass the following order:-

- (a) The prayer to count the past services between 19.02.1991 to 06.09.2001 for the purposes of pension and other terminal benefits is hereby rejected;
- (b) The prayer seeking revised pay scale at the rate of 5200 - 20,200/- with grade pay of Rs.1,900/- with effect from 01.07.2012 is hereby allowed';
- (c) The respondent corporation is directed to revise the pay scale and pension, fixing the grade pay at Rs.1,900/- with effect from 01.07.2012 and confer the monetary benefits to the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

29. The writ petition stands disposed of with the above observations and directions. No cost.

06.02.2025

Neutral Citation: Yes/No
Internet: Yes/No
Speaking/Non-speaking Order
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R.VIJAYAKUMAR, J.

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To

1. The Management of Tamil Nadu
State Transport Corporation,
(Kumbakonam) Ltd.,
Represented by its Managing Director,
Kumbakonam.
2. The General Manager,
The Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Trichy Region,
Trichy.
3. The Administrator,
The Tamil Nadu Transport Corporation
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