

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.10246 of 2015
and M.P.No.1 of 2015

S.Krishnan

... Petitioner

-Versus-

Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Rep. By its Managing Director,
12, Ramakrishna Road,
Salem 636 007.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus directing the respondent to calculate and pay the entire monetary dues to the petitioner as if the petitioner was in continuous service from 20.01.1996 till the date of superannuation on 30.12.2008 and the arrears of pension from 01.01.2009 till date of payment with interest within a time frame.

For petitioner : Mr.J.Saravanel

For Respondent : Mr.Paramasivadoss,
Standing Counsel for TNSCT

ORDER

The petitioner was a conductor in the respondent corporation. He was dismissed from service on certain allegations by order dated 20.01.1996. Since an industrial dispute relating to payment of bonus for the year 1981-1982 was pending in I.D.No.62 of 1982 before the Industrial Tribunal, Chennai, the respondent filed an Approval Petition in A.P.No.8 of 1996 under Section 33(2) (b) of The Industrial Disputes Act seeking for approval of the dismissal of the petitioner.

2. The Industrial Tribunal dismissed the above said approval application on 08.09.2003 for default. The respondent filed an application M.A.No.3 of 2004 to set aside the order dismissing the approval application of the respondent corporation for default. On 11.05.2015, the Industrial Tribunal passed a conditional order and the same was not complied with by the respondent. Hence, the order dated 08.09.2003 dismissing the approval application became final.

3. The order of the Industrial Tribunal came to be challenged in W.P.No.33034 of 2007 before this court. This Court by order dated 17.10.2012 dismissed the above said writ petition with a direction to disburse the retirement benefits as the petitioner reached the age of superannuation on 31.12.2008.

4. Challenging the above said order, the respondent filed a writ appeal in W.A.No.1462 of 2012 before this Court. The Division Bench of this court, by order dated 16.07.2013 dismissed the writ appeal and directed the respondent corporation to settle the terminal benefits within a period of six weeks.

5. Though a portion of the terminal benefits were paid, the wages and the other consequential benefits for the period of his non employment from 20.01.1996 to 31.12.2008 were not paid. Hence, the petitioner has come forward with this writ petition.

6. A detailed counter affidavit has been filed refuting the averments made in the affidavit filed by the petitioner in support of the writ petition. In the counter affidavit, the respondent, inter alia, contended that this court in its order dated 17.10.2012 while dismissing the writ petition directed the respondent to settle the terminal benefits. The Division Bench in its order in the writ appeal, while upholding the order in the writ petition directed to settle the terminal benefits within a period of six weeks from the date of receipt of the copy of the judgement. According to the respondent, as per the order in the writ appeal, terminal benefits have been settled to the petitioner and the petitioner could not ask for wages and other benefits from 20.01.1996 to 31.12.2008.

6. I have carefully considered the submissions made on either side.

7. Admittedly, the petitioner was dismissed from service by order dated 20.01.1996. But, the Approval Petition in A.P.No.8 of 1996 filed by the respondent under Section 33(2)(b) of The Industrial Disputes Act, 1947, came to be dismissed for default. The order of the industrial tribunal was upheld by this court and thus, the order dismissing the petitioner did not come into force at all. Thus, the petitioner is deemed to have been in service from 20.01.1996 to till 31.12.2008, the date of superannuation.

8. It is useful to refer to a Constitution Bench judgement of the Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma , (2002) 2 SCC 244 wherein the Apex Court has held that when the approval application was rejected, the workman deems to continue in service as the dismissal never came into effect. Accordingly, the Apex Court had issued a direction to pay the wages for the period of non employment.

9. In M.D. Tamil Nadu State Transport Corporation v. Neehivilangan, 2001 (3) CTC 372 also the Apex Court held that when the approval for dismissal the workman was rejected by the tribunal, the employer is bound to treat the employee as continued in service and give him all consequential benefits.

10. In the instant case also, the approval petition filed by the respondent corporation seeking to approve the dismissal of the petitioner came to be dismissed. The challenge made to the refusal of approval for dismissal of the petitioner ended against the respondent corporation and ultimately, the order of the industrial tribunal dated 08.09.2013 dismissing the approval petition has become final. The law laid down by the Apex Court in the judgements in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma , (2002) 2 SCC 244 and M.D. Tamil Nadu State Transport Corporation v. Neehivilangan, 2001 (3) CTC 372 squarely applies to the facts and circumstances of the present case. Hence, this court is inclined to allow the writ petition.

11. At this juncture, the learned counsel for the petitioner would submit that the respondent is bound to treat the petitioner as continued in service till date of his superannuation i.e., on 31.12.2008 and to settle all consequential benefits for the period of non employment from 20.01.1996 till date of his superannuation on 31.12.2008.

12. On the other hand, reiterating the averments made in the counter affidavit, the learned counsel for the respondent would submit that the petitioner was paid a sum of Rs.55,015/- towards provident fund, a sum of Rs.22,738/- towards gratuity. He would further submit that apart from the above, a sum of Rs.1,58,190/- was also paid towards difference in gratuity and the other benefits and the petitioner cannot ask for wages for the period from 20.01.1996 to 31.12.2008.

13. It is not in dispute that the wages for the period of non-employment were not paid. Since the approval petition under Section 33(2)(b) of The Industrial Disputes Act seeking approval for dismissal was rejected, the petitioner is entitled to receive wages for the period of non-employment.

14. It is also not in dispute that the petitioner is entitled to pension as per the Pension Rules applicable to the Transport Corporation. But the counter affidavit is silent in respect of payment of pension.

15. In the result, the writ petition is allowed and respondent is directed to pay the wages for the period from 20.01.1996 to 31.12.2008. The respondent is also directed to grant pension to the petitioner as per pension rules applicable to the employees of respondent corporation and settle the arrears of pension. For payment of pension, gratuity and other terminal benefits, the period of service from 20.01.1996 to 31.12.2008 shall also be taken into account. The respondent shall pay the

wages, pension, gratuity and other terminal benefits as stated above on or before 31.08.2015. No costs. Consequently connected MP is closed.

Sd/-
Asst.Registrar (CS III)

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Sub Asst. Registrar

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To

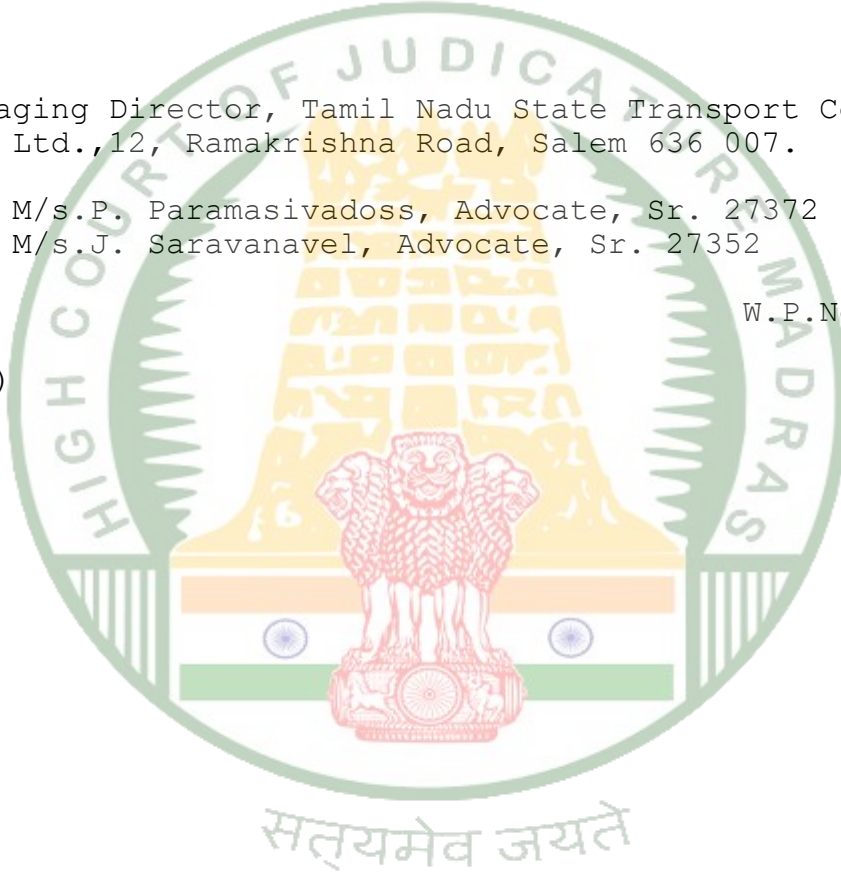
The Managing Director, Tamil Nadu State Transport Corporation
(Salem) Ltd.,12, Ramakrishna Road, Salem 636 007.

1 cc to M/s.P. Paramasivados, Advocate, Sr. 27372

1 cc to M/s.J. Saravanavel, Advocate, Sr. 27352

W.P.No.10246 of 2015

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