

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.22166 of 2015

S.Anbalagan

.. Petitioner

Versus

1. The Managing Director
Metropolitan Transport Corporation
Anna Salai, Pallavan Illam,
Chennai -600 002.
 2. The Administrator
Tamil Nadu State Transport Corporation
Employees Pension Fund,
Pallavan Slai, Chennai - 600 002.
- .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents to pay pension to the petitioner after taking note of the service benefits given to him in the Award dated 05.09.2002 passed in I.D.No.633 of 1996 and thus render justice.

For Petitioner : Mr.S.T.Varadarajulu

For R1 and R2 : Mr.P.Paramasivadoss

O R D E R

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Heard Mr. S.T.Varadarajulu, learned counsel for the petitioner and Mr.P.Paramasivadoss, learned standing counsel for the respondent Corporation.

2. The petitioner was working as a conductor in the respondent Corporation and he has filed this writ petition for issuance of a writ of mandamus to direct the respondents to pay pension to him, after taking note of the service benefits given to him in the Award dated 05.9.2002 passed in I.D.No.633 of 1996.

3. At the very outset, it has to be pointed out that the prayer sought for in the writ petition is not properly worded / couched since the Award dated 05.9.2002 in I.D.No.633 of 1996 stood modified, pursuant to the Award dated 05.12.2012 in the Lok Adalat in W.A.No.374 of 2011. Therefore, if at all, the petitioner seeks any benefit it should be only in terms of Lok Adalat Award. Making this factual position clear, it would be necessary to take note of the following facts for deciding as to whether the petitioner is entitled to the relief sought for.

4. The petitioner was appointed in the respondent Corporation on 29.8.1980 and absorbed as permanent employee on 23.6.1982. If he had continued in service without any blemish, the normal date for his attaining superannuation would be on 31.5.2014. However, a disciplinary action was initiated on him on 04.12.1991 and he was dismissed from service. The petitioner raised a dispute before the First Additional Labour Court, Chennai in I.D.No.633 of 1996 questioning the order of dismissal. The matter was pending before the Labour Court till 2002 and ultimately an Award was passed on 05.9.2002, directing the respondent Management to reinstate the petitioner in service with 50% back wages, continuity of service and with all other attendant benefits. This was challenged by the Management by filing a writ petition in WP.No.22280 of 2003. The said writ petition was allowed and as against which, the petitioner/employee filed an appeal before the Division Bench of this Court in WA.No.374 of 2011. Thereafter, with the consent of parties, the matter was referred to Lok Adalat and after mutual discussion, negotiation, Mediation and Conciliation between the parties, a compromise was arrived at and the matter was settled and the terms of settlement was reduced in writing and the same was also recorded by the Lok Adalat, which was signed by the parties, granting four weeks time to the Management to implement the Award. At this stage, it would be relevant to extract the terms of settlement recorded before the Lok Adalat, which reads as follows:

TERMS OF SETTLEMENT

The award passed in I.D.NO.633 of 2002, dated 05.9.2002 is modified by directing the respondent i.e. Management of Metropolitan Transport Corporation (Chennai Division - I) Limited, to re-instate the applicant with continuity of service with all other attendant benefits. Only thing given up is full back wages. The award grants 50% of the back wages and that benefit are given up by the appellant viz., Mr.Anbalagan.

2. It is also agreed that the amount deposited by the Management before the Lower Court that is Rs.1,19,397/- (Rupees One lakh Nineteen Thousand Three Hundred Ninety Seven only), with interest if any shall be returned to the respondent/Metropolitan Transport Corporation, Chennai Division. To that effect the award is modified accordingly. Four weeks time is granted to implement the award.

sd/-
Anabalagan

sd/-
Counsel for the Appellant

5. Though in the Lok Adalat it was agreed by the Management to implement the Award within four weeks, the petitioner was reinstated only on 11.4.2013 and on attaining the age of superannuation, the petitioner retired on 31.5.2014. In this writ petition, the petitioner claims payment of pension. Before filing the present writ petition, he moved the Labour Court by filing a petition in EP.No.207 of 2013 to execute the Award.

6. While so, the Management filed a writ petition seeking writ of prohibition to prohibit the Labour Court from proceeding with the Execution Petition in EP.No.207 of 2013 till the monitory value of the claim is computed as per the provisions of Section 33 (c) of the Industrial Disputes Act. The said writ petition was disposed of by order dated 15.7.2014. As against which, the petitioner filed a Writ Appeal before the Hon'ble Division Bench on 15.3.2015 and the same was dismissed by judgment dated 27.10.2015.

7. It is the contention of the learned standing counsel for the respondents that the pension cannot be paid as such since the amount has not been computed. Hence, according to the learned standing counsel, the petitioner should only resort to the procedure under Section 33 (c) (2) of the Industrial Disputes Act.

8. The second contention raised by the learned standing Counsel is that the pension is payable to the workmen only in terms of the Tamil Nadu State Transport Corporation Employees Pension Fund and since the petitioner has not effected contribution to such Fund, the question of payment of pension does not arise.

9. In the calculation sheet given by the respondents, it is stated that the petitioner has completed service of 7 years, when the minimum qualifying service for being eligible to receive pension is 10 years.

10. It is seen that the Labour Court had passed an Award granting reinstatement with all benefits and 50% back wages. This Award dated 05.9.2012 stood modified pursuant to the settlement recorded by the Lok Adalat on 05.12.2012. The only modification made in the Lok Adalat was that the petitioner cannot claim any back wages which he has given up. The other directions in the Award remain intact. The Management rightly understood the portion of the Award which they agreed in the Lok Adalat and reinstated the petitioner and the petitioner also retired from service on 31.5.2014 on attaining the age of superannuation.

11. Regarding the question as to whether the services between the date on which the petitioner became permanent employee till the date of retirement should be ignored, the only answer, in my opinion is "No". The petitioner having been appointed on 29.8.1980 and succeeded before the Labour Court resulting in an Award of reinstatement which was agreed to in the Lok Adalat and he, having been reinstated on 11.4.2013, the entire services from 23.6.1982 to 31.5.2014, which is the date of superannuation, should be reckoned for computing the total length of service. If it is computed, it goes without saying, the petitioner is entitled for pension.

12. The next hurdle pointed out by the learned standing counsel for the respondents is that the petitioner has not contributed any amount towards Pension Fund. Obviously, he could not have contributed any amount because he was dismissed on 04.12.1991 and the Tamil Nadu State Transport Corporation Employees Pension Fund came into operation only on 01.1.1998. However, it does not mean that the respondent Corporation has to pay the entire amount nor it is the case of the petitioner that he will not remit the amount quantified as his contribution after computation is made. In fact, the learned counsel for the petitioner submitted that if the calculation is arrived at towards the petitioner's contribution, it can be deducted from the amount payable to the petitioner.

13. Further, the decision dated 27.10.2015 rendered in WA.No.15.3.2015 can have no bearing to the instant case as the same was relating to back wages, which obviously the petitioner was not entitled in view of the settlement entered in the Lok Adalat.

14. In the light of the above discussion, the writ petition is disposed of directing the respondent Corporation to compute the petitioner's total length of service from 23.6.1982 onwards and calculate his pension, after ascertaining the amount in accordance with the relevant Rules and after deducting the petitioner's contribution, pay the same to the petitioner. It is needless to state that the monthly pension shall be paid to the petitioner without any default. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

1. The Managing Director,
Metropolitan Transport Corporation,
Anna Salai, Pallavan Illam,
Chennai -600 002.
2. The Administrator,
Tamil Nadu State Transport Corporation,
Employees Pension Fund,
Pallavan Slai, Chennai - 600 002.

+1cc to M/S.S.T.Varadarajulu, Advocate, S.R.No.14163
+1cc to M/s.P.Paramasivadoss, Advocate, S.R.No.14193

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