

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.9513 of 2013

1. I.Basha (Died)
2. Shamshath
3. Asenkhan
4. Firosekhan
5. Ashaparveen

(P2 to P5 are substituted as LR's. of deceased P1 Basha as per order dated 09.09.2016 in WMP.No.16738 of 2016)

...Petitioners

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Limited,
Dharmapuri Region,
Bharathipuram,
Dharmapuri-5.
2. The General Manager,
Tamil Nadu State Transport Corporation
(Salem) Limited,
No.12, Ramakrishna Road,
Salem-7.
3. Tamilnadu State Transport Corporation
Employees Pension Trust
rep. by its Administrator,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai-2.

...Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the respondents to sanction and pay the petitioner attendant benefits from the date of dismissal to the date of reinstatement to fix his pay correctly from the date of the award to the date of his superannuation on par with his

colleagues and to pay him the difference in wages and also to settle all his terminal benefits, namely, the commuted value of pension, monthly pension and earned leave encashment amount, based on the salary payable to him as on his date of retirement forthwith, together with interest at the rate of 18% per annum till the amounts are actually paid.

For Petitioners : Mr.R.Krishnaswamy

For 1st Respondent : Mr.B.S.Sundaramoorthi

For respondents 2&3 : Mr.P.Paramasiva Doss

ORDER

The Writ Petition has been filed to issue a writ of Mandamus, directing the respondents to sanction and pay the petitioner attendant benefits from the date of dismissal to the date of reinstatement to fix his pay correctly from the date of the award to the date of his superannuation on par with his colleagues and to pay him the difference in wages and also to settle all his terminal benefits, namely, the commuted value of pension, monthly pension and earned leave encashment amount, based on the salary payable to him as on his date of retirement forthwith, together with interest at the rate of 18% per annum till the amounts are actually paid.

2. The case of the petitioner is that he joined the services of the erstwhile Annai Sathya Transport Corporation as a Driver on 25.04.1991 and the same was later on amalgamated with the 1st respondent Corporation. Thereafter, he was dismissed from service by an order dated 14.03.1997 on the ground that he was responsible for an accident which took place on 02.08.1996.

3. In this regard, the petitioner raised an Industrial Dispute in I.D.No.15/1998 before the Labour Court, Salem. By an order dated 11.07.2002, the Labour Court set aside the order of dismissal and directed the 2nd respondent to reinstate the petitioner with continuity of service and other attendant benefits, but without back wages.

4. While so, the 2nd respondent challenged the award of the Labour Court by filing W.P.No.6565/2003 before this Court. Similarly, the petitioner also filed W.P.No.9964/2004 in so far

as deprivation of back wages is concerned and he was paid the last drawn wages payable under Section 17(B) of the I.D.Act. Later on, by a common order dated 05.11.2009, this Court dismissed both the Writ Petitions, confirming the award of the Labour Court, Salem.

5. Thereafter, the 2nd respondent reinstated the petitioner on 04.09.2010 with continuity of service and also with all other attendant benefits. However, the 2nd respondent calculated the total wages payable to him from 01.12.2002 to 30.04.2010 at Rs.7,66,091.90. From that amount, they have deducted a sum of Rs.3,28,326.20 towards 17(B) wages which were paid to him during the pendency of the writ petition. Further, they have asked the petitioner to forgo 60% of the remaining amount, namely, a sum of Rs.2,62,659.30 and also deducted a sum of Rs.70,842/- towards Provident Fund Contributions and paid a net amount of Rs.1,04,264/- only.

6. It is the further case of the petitioner that on attaining the age of superannuation, the petitioner retired from service on 29.02.2012. Except the settlement of Provident Fund Contributions and Social Security Scheme Benefits, the respondents have not paid the petitioner any of the terminal benefits, namely, pension, gratuity, earned leave encashment etc. Though several representations have been sent, the respondents 1 and 2 have not settled his terminal benefits. Therefore, the petitioner issued a legal notice dated 11.10.2012 to the respondents 1 and 2 to pay the terminal and attendant benefits as stated above in the prayer. But the respondents 1 and 2 neither gave any reply nor paid the terminal and attendant benefits as claimed by the petitioner. Hence, the present Writ Petition.

7. During the pendency of the Writ Petition, since the petitioner died, his legal representatives were impleaded as petitioners 2 to 5 in this Writ Petition.

8. Though a larger prayer has been made in the Writ Petition, now the learned Counsel for the petitioners 2 to 5 would submit that they may be permitted to give a representation to the respondents 1 and 2 in this regard within a time stipulated by this Court, who in turn, may be directed to consider the same on a further time stipulated by this Court.

9. The learned Counsel for the respondents would also concede to the same.

10. In view of the above, this Court directs the petitioners 2 to 5 to give a fresh representation about their claim along with a copy of this Order to the respondents 1 and 2 within a period of one week from the date of receipt of a copy of this Order and on receipt of the same, the respondents 1 and 2 are directed to consider the same on merits and in accordance with law and to pass appropriate orders with regard to the claim of the petitioners, within a period of four weeks thereafter.

11. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Limited, Dharmapuri Region,
Bharathipuram, Dharmapuri-5.
2. The General Manager,
Tamil Nadu State Transport Corporation
(Salem) Limited, No.12, Ramakrishna Road,
Salem-7.
3. The Administrator,
Tamilnadu State Transport Corporation
Employees Pension Trust,
Thiruvalluvar Illam, Pallavan Salai,
Chennai-2.

2 CCs to Mr.P.Paramasiva Doss, Advocate, SR. 51552 52293

W.P.No.9513/2013

VSN (CO)

PSI 06/10/2016