



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.09.2016
Pronounced on : 01.12.2016

WEB COPY

CORAM :

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.(MD)Nos.16914 & 16915 of 2016
& W.M.P.(MD) No.12269 of 2016

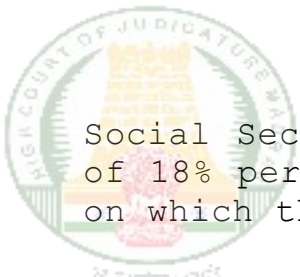
R.Kulothungan ... Petitioner in both W.Ps.

vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited.,
No.27 Railway Station Road, Kumbakonam
2. The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Pillai Thanneer Panthal, Thirumayam Road,
Pudukottai 612 001
3. The Administrator,
Tamil Nadu State Transport Corporation,
Pension Fund Trust, Thiruvalluvar Illam,
Pallavan Salai, Chennai - 2 ... Respondents in both W.Ps.

Prayer in W.P.(MD) No.16914 of 2016:- Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus directing the respondents to pay the petitioner's salary from 07.04.2011 to 10.12.2012 together with interest at the rate of 18% per annum from the date of the retirement of the petitioner to till the date on which the above benefits are settled to the petitioner.

Prayer in W.P.(MD) No.16915 of 2016:- Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration, to declare the action of the respondents in withholding the petitioner's terminal benefits as illegal, null and void and arbitrary and consequently, directing the respondents to settle all the terminal benefits by treating the period of the petitioner's compulsory wait from 07.04.2011 to 10.12.2012 as duty with pay and by treating that the petitioner retired from service on voluntary retirement with effect from 10.12.2012 and to pay all the retirement dues payable to him including monthly pension, gratuity, commuted value of pension, leave encashment benefits, refund of his contribution towards Institute of Road Transport



Social Security Scheme Amount, together with interest at the rate of 18% per annum from the date of his retirement to till the date on which the above benefits are settled to him.

For Petitioner in both W.Ps. : Mr. A.Rahul
For Respondents in both W.Ps : Mr. D.Sivaraman

C O M M O N O R D E R

W.P.No.16914 of 2016 has been filed for the issuance of a writ of mandamus directing the respondents to pay **the salary of the petitioner from 07.04.2011 to 10.12.2012 together with interest at 18% per annum** from the date of retirement to till the date on which the above benefits are settled.

2. W.P.No.16915 of 2016 has been filed seeking for a declaration that the withholding of the terminal benefits of the petitioner by the respondents is null and void and consequently, to direct the respondents to settle the terminal benefits by treating the period of the compulsory wait from 07.04.2011 to 10.12.2012 as duty period and also to treat that the petitioner as retired from service on voluntary retirement with effect from 10.12.2012.

3. As the parties are same and the issue involved in both these writ petitions are inter-connected, these writ petitions are heard together and a common order is passed.

4. Brief facts:-

The petitioner having joined the services of the respondents as Driver on 15.07.1985 and became a permanent employee on 01.08.1986. He became a selection grade driver and later, as Senior Grade driver. His services had been praise worthy and not blameworthy and he has received accident free award from the Management.

4.1. The petitioner was sent to a routine eye-checkup to Vasana Eye Care Hospital, Trichirappalli, on 07.04.2011. The Doctors informed the petitioner that his eyes are not fit for driving and that the report of the eye-test would be sent to the second respondent. **From 07.04.2011 onwards, the petitioner was not given duty. The petitioner was kept under compulsory wait.** After getting the medical report from Vasana Eye Care Hospital, the petitioner was referred to the Regional Medical Board, Thanjavur Medical College and hospital, by the order, dated 01.06.2011. The Medical Board examined him on four days and finally, the Regional Medical Board certified that the petitioner was unfit to act as a Driver and **the Board was also advised to provide the petitioner an alternative job. The petitioner was not given any alternative job.** Therefore, the petitioner made a representation to the respondents on 23.08.2011. The second respondent informed the



petitioner that there is no provision for alternative employment.

4.2. As the petitioner was not provided with any alternative employment, **the petitioner was compelled by circumstances to submit an application for retirement on VRS. Accordingly, an application was submitted on 10.12.2012.** However, no orders were passed and that made the petitioner to file Writ Petition (MD) No.2080 of 2013 seeking direction to the respondents to consider his application for Voluntary Retirement.

4.3. In the meantime, the petitioner attained the age of superannuation on 31.08.2014. Therefore, the writ petition became infructuous and it was dismissed as withdrawn.

5. Despite the medical report, certifying that the petitioner is not fit for regular job and that alternative job must be provided, the respondents did not act upon the medical report and did not provide job. The petitioner is entitled to all the benefits and privileges as are entitled under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 (in short "the Act"). As the benefits under the said Act were not provided, the petitioner is entitled to salary from 07.04.2011 to 10.12.2012.

6. Since the petitioner's claim for voluntary retirement was not considered by the respondent and that he has attained superannuation on 31.08.2014, the petitioner is entitled to pension and other terminal benefits, including the period during which the petitioner was put under compulsory wait.

6.1. If the claim for alternative employment had been considered in time, the petitioner would not have opted for voluntary retirement. Even after the petitioner filing the application for Voluntary Retirement and the petitioner's job had suffered its natural end, by efflux of time.

7. The learned counsel for the respondents submitted that it is only the petitioner who did not turn for duty and therefore, he is not entitled to claim any wages for the period from 07.04.2011 to 10.12.2012.

7.1. But the learned counsel for the petitioner contended that under Section 47 (1) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955, the petitioner must be treated as a disabled person and that the petitioner is entitled to alternative light duty job.

7.2. The fact remains that when the petitioner was referred to the Regional Medical Board, the medical Board has certified that the petitioner is not fit to act as driver and as decided by ophthalmologist, he has been advised alternative job. The petitioner has also submitted representations, dated 23.09.2011 and 05.11.2012 stating that he has been put under compulsory wait, without any basis and has explained the penurious circumstances



under which his family has been placed. Despite the representations, there is no response from the respondents.

7.3. The learned counsel for the petitioner relied upon a decision of this Court reported in **W.P.No.5858 of 2011, dated 19.12.2011 (A.Mani v. Managing Director, Tamil Nadu State Transport Corporation, Kumbakonam and two others)** wherein it has been held that Section 47 of the Act is an injunction against the employer from dispensing with the services of the person who has become disabled. In A.Mani's case it has been held as follows:-

" 4. Section 47(1) is an injunction against the employer from dispensing with the service of a person who has become disabled. The disability has to be considered under the provisions of the Act. **Therefore, it is needless to state that such person, if the services were dispensed with or discontinued or denial of alternative employment, is also entitled for wages, as if, there was no denial of employment....."**

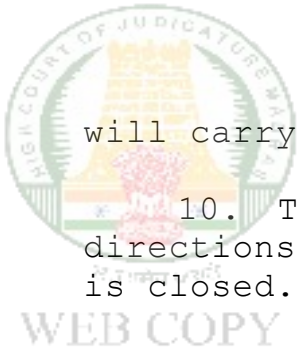
8. Taking into consideration the submissions made by the learned counsel for the petitioner and also the decision of this Court, this Court is of the view that the petitioner is entitled to all the benefits as if he was in continuous service and the entire backwages will have to be paid to the petitioner. The petitioner has attained the age of superannuation on 31.08.2014.

9. The respondent is unable to refute the contentions of the petitioner, either factually or legally. The amount due to the petitioner is not gratis or bounty. Therefore, the period of compulsory wait of the petitioner from 07.04.2011 to 10.12.2012 shall be treated as duty with pay and treat the petitioner as retired from service on voluntary retirement with effect from 10.12.2012 and to pay all the retirement dues payable to him at the rate of 6% per annum (as ordered by the Division Bench of this Court) from the date of retirement to till the date on which the above benefits are settled to the petitioner.

9. In the result, the respondents are directed to pay:
(i) the salary to the petitioner from 07.04.2011 to 10.12.2012 together with interest at the rate of 12% per annum;
(ii) the retiral benefits to the petitioner with interest at the rate of 6% per annum, within a period of one month from the date of receipt of a copy of this order;
(iii) As far as pensionary benefits are concerned, the petitioner is entitled to get pensionary benefits from the date of retirement, i.e., on 10.12.2012, with interest at the rate of 6% per annum.

<https://hcservices.ecourts.gov.in/hcservices/>

9.1. It is made clear that, if any of the amounts mentioned supra is not paid within the time stipulated, the arrears payable



will carry interest at the rate of 12% per annum.

10. These writ petitions stand disposed of, on the above directions and terms. No costs. Consequently, the connected WMP is closed.

Sd/-

Assistant Registrar(co)

/True copy/

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited.,
No.27 Railway Station Road, Kumbakonam
2. The General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Pillai Thanneer Panthal, Thirumayam Road,
Pudukottai 612 001
3. The Administrator,
Tamil Nadu State Transport Corporation,
Pension Fund Trust, Thiruvalluvar Illam,
Pallavan Salai, Chennai - 2

+2cc to Mr.D.Sivaraman, Advocate SR.No.78288, 78289

+2cc to Mr.A.Rahul Advocate Sr.No.75081,75082

srk

sm:sks-rr:21/12/2016:5P/8C

Order in
W.P.(MD)Nos.16914 & 16915 of 2016
& W.M.P.(MD) No.12269 of 2016