

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.1003 of 2013
and
M.P. Nos. 1 & 3 of 2013

The Managing Director
Metropolitan Transport
Corporation (Chennai Ltd)
Mount Road
Chennai- 600 002

... Petitioner

Vs.

1. G.Rathinam
2. The Commissioner/
Secretary to Government,
State Transport Department
Chennai - 600 005.
3. The Presiding Officer
I Additional Labour Court
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records in C.P. No.27 of 2009 on the file of 1st Additional Labour Court, Chennai order dated 02.06.2011 and quash the same and pass such further orders.

For Petitioner : Mr. V.Udayakumar

For Respondents : Mr. V.Balamurugan for R1
R2 & R3 - Given up

O R D E R

The petitioner has filed the present writ petition, seeking to quash the order dated 02.06.2011 in C.P. No.27 of 2009 on the file of 1st Additional Labour Court, Chennai.

2. Learned counsel for the petitioner submitted that though the 1st respondent was appointed as a Driver on 17.10.1971 on daily wages, he was absorbed in time scale of pay, with effect from 01.11.1971, after the formation of Corporation. As per G.O.Ms. No. 42 Transport/05 department dated 27.05.2005, the erstwhile Tamil Nadu State Transport Department employees, who were absorbed in Tamil Nadu State Transport Corporation and retired before or after 01.01.1988, but before 01.09.1998 be paid pension if they had put in qualifying service of 10 years as on 01.04.1982 and the period of daily paid, Leave on Loss of Pay and suspension treated as specific punishment shall be excluded while arriving at the Net Qualifying service. It is further submitted that the 1st respondent has put in only 9 years, 4 months and 21 days of service from the date of absorption upto to the cut of date. As per the said G.O., the period of daily paid services has to be excluded while arriving at the Net Qualifying service and so the 1st respondent is not eligible for pension and D.A arrears. Further, the petitioner Corporation is no way connected with the services rendered by the 1st respondent, since he has retired on 30.06.1991 on attaining the age of superannuation and as such he is not entitled to file a Claim Petition on the petitioner Corporation. The said G.O has not been considered by the Labour Court and therefore the petitioner has filed the present writ petition challenging the award passed by the Labour Court.

3. On the contrary, learned counsel for the 1st respondent would submit that as per the rulings of this Court in W.A. No.545/1998 and the rulings of the Hon'ble Supreme Court in Civil Appeal No.494/2002, the pensionable service should be determined from the date of entry into service.

4. Heard learned counsel for the petitioner Corporation and the learned counsel for the 1st respondent.

5. In paragraph 5 (a) of the G.O.Ms.No. 42 Transport/05 department dated 27.05.2005, it is observed as follows :-

"(a) The erstwhile Tamil Nadu State Transport Department employees, who were absorbed in Tamil Nadu State Transport Corporation and retired before 01.01.1988 or after 01.01.1988, but before 01.09.1998 be paid pension if they had put in qualifying service of 10 years as on 01.04.1982. Period of daily paid services, Leave on Loss of Pay and suspension treated as specific punishment shall be excluded while arriving the Net Qualifying service."

According to the learned counsel for the 1st respondent, the petitioner is relying only upon the aforesaid G.O., particularly

paragraph 5(a) of the said order, stating that the initial appointment of the respondent has not been taken into consideration, for granting the pension. The said G.O., has been revised before this Court in W.P. No. 24136/2011 by order dated 20.07.2012, wherein paragraph 18 reads as follows:-

" 18. The impugned part of notification, therefore, being violative of Article 14 of the Constitution of India, deserves to be struck down. It is therefore held, that the petitioner shall be entitled to benefit of daily paid service, for counting the service of 10 years for the purpose of pension."

In paragraph 22 of the said order, it is held as follows :-

"22. For the reasons stated above, this writ petition is allowed. The impugned part of G.O.Ms.No. 42 Transport (RW) Department dated 27.05.2005 denying the benefit of daily wage service for the purpose of pension, is declared ultra vires, the Article 14 of the Constitution of India and writ in the nature of Mandamus is issued directing the respondents to grant pension to the petitioner by giving him the benefit of service rendered from 08.06.1963 to 01.04.1982 minus the service of 4 years, 4 months, 21 days spent on leave on loss of pay."

Pursuant to the said order, the petitioner Corporation has chosen to file a Writ Appeal before this Court in W.A. No.414 of 2014 but the same was subsequently withdrawn. So, the order passed in the above writ petition has become final. Hence, the stand of the petitioner Corporation, relying upon the said clause of the Government order, excluding the period of service on daily wages, cannot be countenanced.

6. Hence, no case is made out by the petitioner Corporation, to interfere with the order passed by the Labour Court. The 1st respondent herein is directed to file appropriate application before the Labour Court, for withdrawing the balance award amount and the same shall be considered as expeditiously as possible.

7. Accordingly, the writ petition fails and the same is dismissed. Consequently, the connected M.Ps are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

avr

To

1. The Commissioner/
Secretary to Government,
State Transport Department
Chennai - 600 005.
2. The Presiding Officer
I Additional Labour Court
Chennai.

+1cc to Mr.V.Udayakumar, Advocate, S.R.No.9834
+2cc's to Mr.V.Balamurugan, Advocate, S.R.No.9727

W.P. No. 1003 of 2013
and
M.P. Nos. 1 & 3 of 2013

KJI (CO)
CA(04/04/2017)



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