



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2017

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

WA.No.551 of 2016

and C.M.P.No.7464 of 2016

1. The Managing Director,
State Express Transport Corporation,
Tiruvallur Illam,
Pallavan Salai, Chennai-2.

2.The Secretary of the Corporation & Information Officer,
State Transport Corporation Ltd.,
No.2, Pallavan Salai, Chennai-2.

... Appellants/
Respondent 1 & 2

..Vs..

S.Imayavaramban

... Respondent/Petitioner

Prayer: Writ Appeal has been filed under clause 15 of Letters Patent against the order of this Court dated 27.02.2014 made in W.P.No.7356 of 2011.

Prayer in WP.No.7356 of 2011:Petition filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus Calling for the records connected with the orders passed by the 2nd respondent in Lr.No.2/2402/PIR/SETC/200 dt.6.3.2007 quash the same and also direct the respondent to fix and pay the correct pension-which was being paid from 31.12.2004 to 2/2007 - and to repay the entire amount of subsequently reduced and recovered pension from 31.12.2004 and also to restore the original and correct pension as fixed w.e.f. 31.12.2004 and other legitimate entitlements payable to the petitioner including arrears of Gratuity and commutation and arrears of salary for 11 days from the date of retirement.

For Appellants : Mr.P.Paramasivadoss.

For Respondent : Mr.S.T.Varadharajulu.

JUDGMENT

(Order of the Court was delivered by P.VELMURUGAN, J.)

This Writ Appeal has been filed by the Government



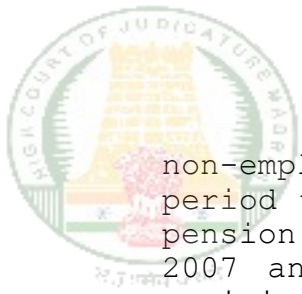
challenging the order of this Court dated 27.02.2014 made in W.P.No.7356 of 2011.

2. The case of the respondent/petitioner before the writ Court is that he was appointed as Driver in the Chozan Transport Corporation on 21.05.1974, he was issued with a charge memo on the ground that he was distributing union magazine and compelling the employees to purchase the said magazine and making certain remarks against the management, ultimately the same was ended in an order of dismissal on 01.03.1989. Thereafter, the management sought for approval of the dismissal order before the Industrial Tribunal. It goes without saying that the order of dismissal from service has become non-est in law and the employee is deemed to be in continuous employment. Since, there was a claim for backwages, it appears that the management negotiated with the workman and a settlement under section 18(1) of the Industrial Disputes Act, 1947 was arrived at on 04.09.1991. Pursuant to the settlement entered into between the employer and the employee the respondent/petitioner was reinstated into service vide proceedings dated 12.09.1991. Subsequently, he was transferred from Chozan Transport Corporation to Thiruvallur Transport Corporation during 1993 and on attaining the age of superannuation he was permitted to retire from service on 31.10.2004. The first appellant/first respondent also issued a service certificate dated 31.10.2004 stating that the petitioner has completed 30years of service from 21.05.1974 to 31.10.2004 and retirement benefits were also sanctioned and paid to him and pension was also given to him from 2004 to 2007 at the rate of Rs.2288/-p.m. by calculating the total length of qualifying service as 25years out of the total length of service of 30years. In the meanwhile, the second appellant/second respondent passed the impugned order dated 06.03.2007 reducing the pension to Rs.732/- from Rs.2288/- without any notice to the respondent/petitioner and without any proper reasons. Hence, the respondent/petitioner is before the Court.

3. The learned single judge after hearing the arguments of both sides, allowed the writ petition filed by the respondent/petitioner.

4. Aggrieved against the order passed by the learned single judge in WP.No.7356 of 2011 dated 27.02.2014, the appellants/Transport Corporation preferred the present writ appeal.

5. The learned counsel appearing for the appellant/transport corporation would submit that learned judge failed to appreciate the terms of settlement under the Industrial Disputes Act, 1947 that he will not have claim for benefits both for the period of



non-employment and for the past services. The non employment period will not be taken into account for review purposes. The pension amount was paid in excess for three years from 2004 to 2007 and the order was passed on 06.03.2007 stating that the revision of pay scale and pensionary benefit will be paid by the TNSTC EPF Trust after the audit. Both the appellants and the respondent are parties to the settlement dated 04.09.1991, the parties to the settlement should strictly adhere the terms of the settlement, beyond the settlement they cannot claim over and above, the learned single judge without considering the the clause (4) of the settlement allowed the writ petition and prays for setting aside the order dated 27.02.2014 made in WP.No.7356 of 2011.

6. The learned counsel for the respondent would submit that the Pension Rule came into force only after the settlement entered into between the respondent and the appellant's corporation. The appellant corporation has not referred to any of the Rules while passing the orders and the stand taken by the appellant at this stage is not useful to the case of the appellant's corporation.

7. On a perusal of the available records the appellant's corporation and the respondent entered into a settlement on 04.09.1991, whereby the respondent/petitioner was reinstated with continuity of service from 01.03.1989 and he transferred from Chozan Transport Corporation to Thiruvallur Transport Corporation during 1993 and on attaining the age of superannuation he was permitted to retire from service on 31.10.2004 and the appellant has also settled the entire retiral benefits and by considering the length of service without resorting to the breaks found in the service as per the terms of the settlement pension was sanctioned w.e.f. 01.11.2004. During 2007, after lapse of more than three years the second appellant/second respondent passed the impugned order dated 06.03.2007, thereby issued the recovery notice restricting the period of service to 11years 6months and 4days after deducting the period of 1year 7months and 14days found to be non qualifying service.

8. As per the terms of the settlement dated 04.09.1991, both the parties will not have any claim for benefits both for the period of non-employment and for the past services. At the time of settlement between the parties, the pension fund Rules was not in existence, later on the Tamil Nadu State Transport Corporation Employees Pension fund rules came into force w.e.f. 01.09.1998. The terms under the pension Rules will not apply subsequent to the settlement entered into between the parties, as per pension fund Rules 2(o) the actual service as defined in the pension rules shall be reckoned for calculating pensionable



service.

9. It is herein pertinent to refer paragraph 9 of order passed by the learned single judge in WP.No.7356 of 2011, the same is extracted hereunder :-

"9. On a careful reading of the Terms of Settlement, it is evidently clear that Clause No.4 pertains to the claim for monetary benefits. The respondent Corporation have also understood clause No.4 in the same manner as referring monetary benefits alone and not to the effect of effacing past services of the petitioner. If that be the case, the Terms of Settlement ought to have been that the petitioner is reinstated as a fresh entrant. However this was not the Terms of Settlement. But, he was reinstated with continuity of service and his pay was also protected by taking into consideration the date of his joining. Therefore, after paying the pension for more than 4 years, by taking into account the qualifying service as 25 years, abruptly, the respondent Corporation has passed the impugned order. The impugned order is the outcome of a wrong understanding of the Terms of the Settlement. The Department recognised the petitioner's total length of service and issued a Service Certificate dated 31.10.2004, in which, they have clearly certified that he has completed 30 years of service from 21.05.1974 to 31.10.2004. Out of this 30 years of service, qualifying service for the purpose of computation of pension is 25 years. This was so calculated and pension was sanctioned in 2004 and all retirement benefits were sanctioned based on the date of joining as 1974. Therefore, to reduce the pension, based on the reasons stated in the impugned order is wholly illegal, arbitrary and under wrong understanding of the Terms of Settlement. The respondent Corporation having understood the Terms of Settlement as it is and sanctioned all benefits to the petitioner in 2004, now, by the impugned order, giving a different interpretation to the Terms of Settlement, would cause great prejudice to the petitioner, that too without affording any opportunity to him, by brushing aside the very conduct of the respondent in issuing service certificate and also extending monetary benefits during the second review in 1992. Hence, for all the above reasons, the impugned order is



unsustainable."

10. It is not in dispute that the respondent/petitioner is the employee of the appellant's transport corporation, during his period of service he was dismissed from service on 01.03.1989. Later on a settlement was entered into between the parties on 04.09.1991, whereby the respondent was reinstated into service from 01.03.1989 with continuity of service and retired from the service on 31.10.2004 and received the retiral benefits and family pension was also sanctioned to him from 01.11.2004. During 2006, the impugned order dated 06.03.2007 was came to be passed on the respondent whereby revising the pay scale and pensionary benefit under the pension rules. After considering the case of the respondent and the length of service rendered by him, the writ Court allowed the claim of the respondent and quashed the impugned order dated 06.03.2007 and directed to recredit the recovered amount from the respondent's pension. At the relevant point of time, the appellant corporation failed to brought to the notice of the writ Court, about the Pension rules. For which, the respondent should not suffer monetarily, failure to brought to the knowledge of the Court on the part of the appellant about the pension rules.

11. We are of the considered view, that the respondent/petitioner has put in more than 30years of service from 1974 to 2004 by considering the total length of service rendered by the respondent/petitioner and after receiving all the retiral benefits including the family pension, the second respondent after a lapse of three years passed the impugned order dated 06.03.2007 by revising the pay scale and the pensionary benefits is not acceptable one. The learned single judge has rightly considered and allowed the writ petition and we find no valid reason to interfere with the order passed by the learned single judge.

12. In view of the above findings, the Writ Appeal stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

tsh

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar



To

1. The Managing Director,
State Express Transport Corporation,
Tiruvallur Illam,
Pallavan Salai, Chennai-2.

2. The Secretary of the Corporation & Information Officer,
State Transport Corporation Ltd.,
No.2, Pallavan Salai, Chennai-2.

+1cc to Mr.S.T.Varadarajulu, Advocate SR.No.87153, dt.8.12.2017

+1cc to Mr.P.Paramasivadosh, Advocate Sr.No.87563 dt.8.12.2017

MR(CO)

sm:18.1.2018

WA.No.551 of 2016