IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.12.2017
CORAM
THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR
W.P.No.34415 of 2003
and W.M.P.No.41776 of 2003

P.Govindaraj … Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram,
Villupuram District.

2.The Chief Accounts Officer [In charge],
Tamil Nadu State Transport Corporation,
Villupuram,
Villupuram District. … Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the 2nd respondent in his proceedings letter No.18/PF5/TNSTC[Div-1]/2003 dated 22.10.2003 and quash the same.

For Petitioner : Mr.S.Vijay Anand

For Respondents : No Appearance

ORDER

The prayer sought for in this Writ Petition is for a Writ of Certiorari, calling for the records of the 2nd respondent in his proceedings in Letter No.18/PF5/TNSTC[Div-1]/2003, dated 22.10.2003 and quash the same.

2.The case of the petitioner is that he joined as Driver at the respondent Corporation in the year 1979 and thereafter, in the year 1985, he was working as Office Assistant in the Villupuram head office. On 31.12.2000, the petitioner retired from service on superannuation. His monthly pension was fixed at Rs.1,580/- with other benefits. Subsequently, without any reason, the 2nd respondent had reduced the pension by fixing at Rs.1,580/- to Rs.753/-. The reason for such reduction is, according to the 2nd respondent, that the re-appointment of the petitioner as Office Assistant from Driver was considered as a fresh entrant and his past service in that cadre should not be taken for pension calculation.

3.While so, the respondents had issued a communication to the petitioner to pay the excess amount of Rs.22,960/- paid to him on or before 31.12.2002. Challenging the said move of the petitioner, the petitioner filed a Writ Petition in W.P.No.46845 of 2002. In the said Writ Petition, this Court passed an order on 31.12.2002, directing the respondents to consider the representation of the petitioner dated 20.11.2002, till such time, the said order of recovery passed by the 2nd respondent shall be kept in abeyance.

4.Pursuant to the directions issued by this Court, the 2nd respondent has passed the present impugned order dated 22.10.2003, reiterating the earlier stand taken by the respondents and demanding the petitioner to pay the said sum of Rs.22,960/-. Against the said order dated 22.10.2003, the present Writ Petition has been filed.

5.When the case is called for, no one is representing for the respondents. The 1st respondent filed a counter affidavit on behalf of the 2nd respondent, wherein at Para 4, they have stated that the petitioner was sanctioned a residuary pension of Rs.1,080/- and taking into account the entire period of service, paid commutation pension of Rs.62,760/- to the petitioner wrongly. It is further stated in the counter affidavit that though earlier the petitioner was working as a Driver, subsequently, had been re-appointed as basic servant without continuity of service as fresh entrant, earlier service as Driver should not be taken into account for pension calculation and therefore, directed to re-calculate the pension and pay the revised pension. Accordingly, the respondent/Corporation revised and reduced the residuary pension to Rs.753/- from Rs.1,080/- with effect from April 2002.

6.Apart from this reason, no other reason has been given by the respondents in the counter affidavit.

7.I have heard Mr.S.Vijay Anand, learned counsel appearing for the petitioner, who would submit that the petitioner, prior to the appointment as Office Assistant, has already been appointed and working as Driver in the respondents/Corporation. Without any breaking in service, the petitioner had been appointed as Office Assistant. Therefore, the past service of the petitioner as Driver shall also be taken into account as continuity of service for the purpose of calculating his service.

8.The learned counsel appearing for the petitioner would submit that in fact, the respondent/Corporation taken into account the past service has rightly calculated the pension and accordingly, fixed the pension at Rs.1,080/-. Subsequently, without any plausible reason, the pension was reduced to Rs.753/- for which the respondent Corporation stating the reason that the past service of the petitioner as Driver shall not be taken into account.

9.I have considered the submissions made by the learned counsel appearing for the petitioner and perused the materials placed before this Court.

10.It is not in dispute that the petitioner had been appointed by the respondents and working as Driver for some time. Thereafter, in view of the vacancy arises to the post of Office Assistant, he had applied for that and he had been selected and appointed to the post of Office Assistant by the respondents/Corporation.

11.According to the petitioner, there was no break in service between the appointment as Driver and the re-appointment as Office Assistant. When that being so, the very same employer can not refuse to give credence to the service rendered by the petitioner as Driver. Moreover, it is brought to the notice of this Court by the learned counsel appearing for the petitioner that under Rule 19(1)(c) of the Tamil Nadu State Transport Corporation Employees' Pension Rules, even for medical invalidation, the past service of the employee will be allowed for the purpose of service benefits including the pensionary benefits. When that being the position, the denial of benefits on the past service rendered by the petitioner and by thus, directing him to pay back, is unjustifiable as per Law.

12.In State of Punjab and others v. Rafiq Masih (White Washer) and others {(2015) 4 Supreme Court Cases 334}, the Hon'ble Apex Court has followed the five circumstances, where even the payments have mistakenly been made by the employer in excess of their entitlement, the said excess amount shall not be recovered from the employees, especially, from the pensioners. For better appreciation, Para 18 of the said Judgment is extracted hereunder:

> 18.It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:
>
> (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D'

service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

13.In view of the law declared by the Hon'ble Apex Court, at any rate, the respondents can not seek recovery of the excess amount said to have been excessively paid to the petitioner. Moreover, the excess payment said to have been paid by the respondents without any calculation taking into account the past services of the petitioner, which is palpably wrong under Rule 19(1)(c) of the Tamil Nadu State Transport Corporation Employees' Pension Rules, as referred to above. Therefore, for all these reasons, the impugned order seeking recovery of the amount have no legs to stand and therefore, the same is quashed and the Writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mps

To

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram, Villupuram.

2.The Chief Accounts Officer [incharge],
Tamil Nadu State Transport Corporation,
Villupuram, Villupuram.

+1 cc to Mr.S.Balasubramanian Advocate sr 87312

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