



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH**AND****THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.A.[MD].No.69 of 2017 and

C.M.P(MD).No.591 of 2017

The Management,
Tamil Nadu State Transport Corporation
[Kumbakonam] Limited,
Trichy Region, Rep by its Managing Director,
Trichy. : Appellant/Respondent No.1

Vs.

1.B.Mohan : Respondent No.1/Petitioner

2.The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai, Chennai 600 002. : Respondent-2/Respondent-2

3.The Management of Tamil Nadu State Transport Corporation,
[Coimbatore] Limited,
Rep by its Managing Director,
Coimbatore. : Respondent-3/Respondent-3

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 25.02.2015 made in W.P.(MD).No.13422 of 2011, on the file of this Court.

Prayer in WP(MD). 13422/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, after calling for the records from the 1st respondent relating to the impugned order dated 20.10.2011 passed in Ref.TNSTC/TRY/DS/SM1/WP9541/2010, quash the same and consequently direct the 1st and 2nd respondents to take in to account the service periods of the petitioner from 01.06.75 to 03.04.76 in the Department of Transport, Government of Tamil Nadu and also from 01.05.78 to 31.01.79 in the 3rd respondent Corporation in calculating his pensionable service and consequently direct the 1st and 2nd respondents to pay him full pension and also to pay him arrears of pension from 01.05.08 with 18% interest P.A.

For Appellant : Mr.D.Sivaraman

For Respondent No.1 : Mr.S.Arunachalam

For Respondent No.2 : Mr.K.Sathiya Singh
Standing Counsel

**JUDGMENT**

[Judgment of the Court was made by R.SUBBIAH, J.]

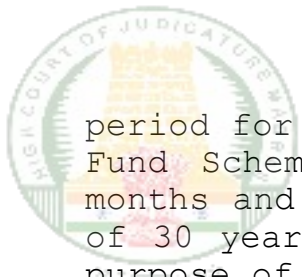
Challenge in this Writ Appeal is to the order, dated 25.02.2015, made in W.P.(MD).No.13422 of 2011.

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2. The case of the first respondent before the learned Single Judge is that he had completed ITI Fitter Course and also Apprenticeship Training. He was appointed as Fitter in the Transport Department, Government of Tamil Nadu, by order dated 16.10.1974. Thereafter, as per order dated 29.06.1975, he was deputed/posted to work at the first appellant Corporation. Subsequently, the first respondent, including several employees, were retrenched from service on 04.06.1976. The first respondent and the other employees, who were retrenched, raised industrial disputes. By virtue of the Award passed by the Industrial Tribunal and also as per the Settlement entered into between the parties, under Section 18(1) of the Industrial Disputes Act, 1947, the employees, who were retrenched from service, were reinstated in service. By order dated 07.01.1978, the first respondent was also reinstated in service at the office of the third respondent herein. Initially, the first respondent was appointed as daily wage employee with effect from 07.01.1978 and thereafter, his services were regularized with effect from 01.02.1979.

3. While so, a resolution was passed in the meeting of the Board of Directors of the first appellant, on 19.07.1983, wherein it was decided to give continuity of service to the employees, like that of the first respondent herein, who were retrenched and subsequently reinstated in service. Therefore, the period of service, viz., from 17.10.1974 to 07.01.1978, during which the first respondent was retrenched from service, was taken into account and treated as part of service period. Thereafter, the first respondent was given promotions as Assistant Tradesman, Tradesman and subsequently as Special Grade Tradesman. He was allowed to retire from service, on attaining the age of superannuation, on 30.04.2008. Thus, according to the case of the first respondent, totally, he had rendered 33 years, 6 months and 13 days of service. The first appellant also had issued a certificate to the said effect.

4. When the matter stood thus, by a settlement dated 13.02.1999, under Section 12(3) of the Industrial Disputes Act, 1947, all the State owned Transport Corporations agreed to introduce and implement the pension scheme as retirement benefit with effect from 01.09.1998. As per Rule 2(r) of the Tamil Nadu State Transport Employees Pension Fund Rules, an employee, who was in service as on 01.09.1998, would become a member of the pension scheme. Thus, according to the petitioner, he is also a member of the pension scheme. However, the grievance of the first respondent is that the appellant should have calculated his pensionable service from 01.06.1975, the date on which contribution was deducted from his wages till the date of his retirement, viz., 30.04.2008, except the



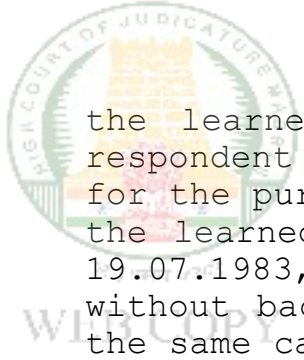
period for which no contribution was made to the Employees Provident Fund Scheme. Thus, in his entire service period of 33 years, 6 months and 13 days, he was a member of the said scheme for a period of 30 years, 10 months and 28 days, which has to be taken for the purpose of calculating the pension.

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5. As per the pension scheme, an employee who rendered 30 years or above 30 years of service, is entitled to get full pension. However, the first respondent was not given full pension. In this regard, the first respondent made representations, on 05.11.2008, 03.02.2009 and 02.06.2010 before the first appellant. Since no action was taken by the appellant, the first respondent was constrained to approach this Court by filing W.P.(MD).No.9541 of 2010, praying for the issuance of a Writ of Mandamus, directing the respondents 1 and 2 therein to take into account the service periods from 01.06.1975 to 03.04.1976, rendered in the Department of Transport, Government of Tamil Nadu and also from 01.05.1978 to 31.01.1979 in the office of the third respondent therein, for the purpose of calculating his pensionable service and consequently to direct the respondents 1 and 2 to pay full pension and also to pay arrears of pension from 01.05.2008 onwards with interest at the rate of 18% per annum.

6. The said Writ Petition, by order dated 26.07.2011, was disposed of, directing the first respondent therein to consider his representation dated 02.06.2010 and pass appropriate orders on merits and in accordance with law, after issuing notice to him so as to enable the first respondent herein to produce the relevant documents to substantiate his claim. However, the first appellant herein, by his proceedings dated 20.10.2011, rejected the claim of the first respondent. Aggrieved over the said order, the first respondent filed W.P.(MD).No.13422 of 2011. The learned Single Judge of this Court, after hearing the learned counsel on either side, by order dated 25.02.2015, set aside the order passed by the first appellant herein dated 20.10.2011 and directed to calculate the service rendered by him for pension from the date on which he became the member of the Employees' Provident Fund Scheme, viz., 01.06.1975. Challenging the said order, the appellant has come up with this Writ Appeal.

7. Today, when the Writ Appeal is taken up for consideration, it is submitted by the learned Standing Counsel appearing for the appellant that it is true that the first respondent herein was appointed as Fitter Grade III in the erstwhile Transport Department with effect from 17.10.1974, on daily wage basis and his service was regularized with effect from 01.06.1975. However, he was retrenched from service with effect from 03.04.1976. Thus, his employment under the third appellant Corporation with effect from 19.01.1978 has to be construed only as a fresh entrant on temporary basis and his service in the third appellant Corporation was regularized with effect from 01.02.1979 and he became the member of the Provident Fund Scheme with effect from 01.02.1979. Therefore, according to



the learned Standing Counsel, the service rendered by the first respondent prior to 01.02.1979 cannot be taken into consideration for the purpose of granting pension. It is the further submission of the learned Standing Counsel that even as per the resolution dated 19.07.1983, it was resolved to give benefit of continuity of service without back wages, which was only the non-contributory period and the same cannot be taken into account for the purpose of calculating the pensionable service. The said aspects, according to the learned Standing Counsel, were not considered by the learned Single Judge. Therefore, the learned Standing Counsel sought for the setting aside of the order passed by the learned Single Judge.

8. Per contra, it is the submission of the learned counsel appearing for the first respondent that a resolution was passed in the meeting held by the Board of Directors of the first appellant, on 19.07.1983, in and by which it was decided to give continuity of service to the employees, like that of the first respondent herein, who were retrenched and subsequently reinstated in service. Hence, the period of service, namely., from 17.10.1974 to 07.01.1978, during which the first respondent was retrenched from service, was taken into account and treated as part of service period. Thereafter, the first respondent was given promotions as Assistant Tradesman, Tradesman and subsequently as Special Grade Tradesman and on 30.04.2008, he was allowed to retire from service, on attaining the age of superannuation. Therefore, according to the learned counsel for the first respondent, totally, the first respondent had rendered 33 years, 6 months and 13 days of service and thus, he is entitled for full pension.

9. It is the further submission of the learned counsel for the first respondent that the learned Single Judge, by placing reliance upon the Judgment of a Division Bench of this Court in **W.A.No.663 of 2007**, dated **04.07.2008**, [**The Management of State Express Transport Corporation [Tamil Nadu], rep by its Managing Director, Pallavalan Salai, Chennai-2, Vs. P.Rajarathinam**] has set aside the order passed by the first appellant herein and allowed the Writ Petition filed by the first respondent, as prayed for. In the said Judgment, a similar issue came up for consideration before the Division Bench and the Writ Appeal filed by the appellant/Writ Petitioner was allowed. Thus, the order passed by the learned Single Judge does not warrant any interference at the hands of this Court.

10. We have considered the above submissions and keeping in mind the said submissions made on either side, we have carefully gone through the materials available on record.

11. Admittedly, a resolution was passed in the meeting held by the Board of Directors of the first appellant, on 19.07.1983, in and by which it was decided to give continuity of service to the employees, like that of the first respondent herein, who was retrenched and subsequently reinstated in service. Accordingly, the period of service, viz., from 17.10.1974 to 07.01.1978, during which



the first respondent was retrenched from service, was taken into account and treated as part of service period and thereafter alone, he was given promotions and allowed to retire from service on 30.04.2008. Thus, in our considered view, the first respondent is entitled for full pension, which the learned Single Judge has correctly ordered. More over, the learned Single Judge, by placing reliance upon the Judgment rendered by the Division Bench of this Court in **W.A.No.663 of 2007**, dated **04.07.2008**, [**The Management of State Express Transport Corporation [Tamil Nadu], rep by its Managing Director, Pallavalan Salai, Chennai-2, Vs. P.Rajarathinam**], held that the first respondent became the member of the Employees' Provident Fund Scheme in the State Transport Corporation on 01.06.1975 and thus, the pensionable service should be reckoned from 01.06.1975. The learned Single Judge has also held that from 01.06.1975 to 03.04.1976 and from 01.05.1976 to 31.01.1979, contributions were also deducted from the salary of the first respondent and accordingly, granted the relief, as sought for by the first respondent. For the foregoing discussion, we do not find any infirmity in the order passed by the learned Single Judge warranting any interference at the hands of this Court.

12. In the result, the Writ Appeal is dismissed, confirming the order, dated 25.02.2015, made in W.P.(MD).No.13422 of 2011. The appellant is directed to implement the order passed by the learned Single Judge within a period of eight weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Transport Corporation
[Kumbakonam] Limited, Trichy Region, Trichy.
 2. The Administrator,
Tamil Nadu State Transport Employees Pension Fund Trust,
Thiruvalluvar Illam, Anna Salai, Chennai 600 002.
 3. The Managing Director,
Tamil Nadu State Transport Corporation,
[Coimbatore] Limited, Coimbatore.
- + 1 CC TO Mr.S.ARUNACHALAM, ADVOCATE IN SR No. 8852
+ 1 CC TO Mr.K.SATHIYA SINGH, ADVOCATE IN SR No. 8471

NB

TE/RR : 16/03/2017 : 5P/6C

JUDGMENT MADE IN
W.A.[MD].No.69 of 2017 and
C.M.P (MD).No.591 of 2017
15.02.2017