



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.11412 of 2013

K.Rangaswami

... Petitioner

Vs.

1.The Government of Tamilnadu,  
Rep. by its Secretary,  
Transport Department,  
Fort St. George, Chennai - 1.

2.The Accountant General,  
Pension 29 Section,  
D.M.S. Nandanam,  
Chennai - 600 018.

3.The General Manager,  
Tamil Nadu State Transport Corporation (Tirunelveli) Ltd.,  
(A Government of Tamil Nadu undertaking),  
No.19, Trivandrum Road,  
Vannarapettai Post,  
Tirunelveli - 627 003.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records pursuant to the impugned order passed by the 3<sup>rd</sup> Respondent in his K.No.4260/Nir.9/TNSTC/Tly/2006 dated 27.08.2012, quash the same as illegal and consequently directing the Respondents to sanction pension to the petitioner with effect from 17.04.1982 as per G.O.Ms.No.42 Transport Department, dated 27.05.2005 and to pay all arrears with interest.

For Petitioner :Mr.B.Christopher

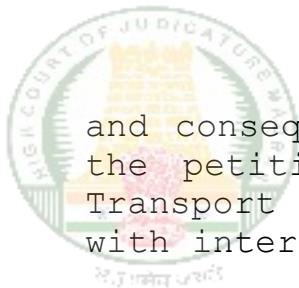
For 1<sup>st</sup> Respondent :Mr.V.Muruganantham  
Additional Government Pleader

For 2<sup>nd</sup> Respondent :Mr.P.Gunasekaran

For 3<sup>rd</sup> Respondent :Mr.K.Sathiyasingh

## O R D E R

The prayer in the writ petition is for a writ of Certiorarified Mandamus, calling for the records pursuant to the impugned order passed by the 3<sup>rd</sup> Respondent in his proceedings in K.No.4260/Nir.9/TNSTC/Tly/2006 dated 27.08.2012, quash the same



and consequently directing the Respondents to sanction pension to the petitioner with effect from 17.04.1982 as per G.O.Ms.No.42 Transport Department, dated 27.05.2005, and to pay all arrears with interest.

2. The short facts which are leading to the filing of this Writ Petition is that the petitioner was appointed in the year 1965 as Conductor and he was subsequently regularised by Government Transport Corporation. He was transferred to respondent Transport Corporation on 31.05.1976. While he was working at the respondent Corporation, on 17.04.1982, he was dismissed from service. As against the said dismissal order he raised Industrial Dispute before the Deputy Commissioner of Labour and a settlement under Section 12(3) of the Industrial Disputes Act, 1947 was reached between the parties on 07.10.1982 and the said 12(3) settlement order passed by the Deputy Labour Commissioner had been published on 30.06.1983. As per 12(3) settlement the following order has been passed:

"WORKERS DISMISSED FOR SHORT REMITTANCE OF COLLECTIONS

1. Thiru Azariah, Conductor, Ranithottam Depot - I
2. Thiru Rengasamy, Conductor, Tenkasi Depot
3. Thiru C. Kanagaraj, Conductor, Ranithottam Branch.

All the above 3 conductors have been removed from service by the Corporation for the short remittance of collections of Rs.163.50, 103.96 and Rs.152.55 respectively. The contention of the management is that the short remittance of collection is temporary misappropriation of the corporation funds and if it is allowed to exist there would be loss of revenue to the corporation.

It is understood that the conductors are permitted short remittance upto Rs.5/- and the one who is responsible for such short remittance should make good of it before he commences his next duty. It is also given to understand in Thiruvalluvar Transport Corporation short remittance upto Rs.20/- is permitted. It is therefore evident that the management itself is aware of such short remittance and the same is unavoidable. Because of the short remittance upto Rs.5/- has been permitted by the management there is no case of misappropriation to that extent. However, there is no justification in the argument of the Management that the short remittance will lead to a case of misappropriation of corporation funds because short remittance of collections has not been defined as a misconduct in the certified Standing Orders of the Corporation. In the absence of any such provision in the Certified Standing Orders, it is not just and proper for the management to initiate disciplinary proceedings and impose capital or deadly punishments on the workman for short remittance which is not a misconduct under Standing Orders. I, therefore, conclude that the

Corporation have acted without authority while inflicting the punishments in respect of these 3 workers."

In spite of the said settlement reached between the parties, no benefit has been given to the petitioner and the petitioner has not been reinstated. In this regard the petitioner also had given representations on 20.05.2006, again on 21.07.2006 and again on 02.01.2007 and also on 10.11.2007. However, without considering the said plea on the part of the petitioner ultimately the third respondent has passed the impugned order on 27.08.2012, thereby the pensionary benefits sought for by the petitioner had been denied. Challenging the same, the present Writ Petition has been filed.

3. Heard both sides.

4. In this regard the learned counsel appearing for the petitioner would submit that in spite of the 12(3) settlement, the benefits have not been conferred on the petitioner. The learned counsel appearing for the petitioner would rely upon the judgment of this Court made in W.P.(MD) No.8760 of 2007, wherein the learned Judge of this Court has passed the followed order:

"4. Learned counsel for the petitioner submits that as per 18(1) settlement dated 31.03.1981, the period of dismissal from service till the date of reinstatement shall be treated as continuity of service and without back wages and the said 18(1) settlement dated 31.03.1981 as found in the typed set of papers page No.3 has not been taken into account before passing the impugned order. He further submits that as per G.O.Ms.No.42 Transport (RW) Department dated 27.05.2005, it is stated that 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 the qualifying service of 10 years as on 01.01.1982. Period of daily paid services, leave on loss of pay and suspension treated as specific punishment should be excluded while arriving the net qualifying service.

5. Learned counsel for the petitioner further submitted that in the light of the 18(1) settlement the period on which the petitioner was out of employment shall be treated as pensionable service and the petitioner is entitled to get all pensionary benefits. However, the said aspect has not been considered by the second respondent, while passing the impugned order.

6. In view of the above, the impugned order is set aside and the second respondent is directed to pass fresh orders taking note of 18(1) Settlement dated 31.03.1981 and to reinstate the petitioner in service with continuity of service without back wages during the period of termination as well as the provision contained in G.O.Ms.No.42

Transport Department dated 27.05.2005 within six weeks from the date of receipt of a copy of this order."

By relying upon the said judgment, the learned counsel appearing for the petitioner would submit that the petitioner would be entitled to get pensionary benefits on the basis of the settlement and based on G.O.Ms.No.42 Transport Department dated 27.05.2005. Therefore, he requested that the impugned order presently passed rejecting the said plea made by the petitioner is liable to be set aside and direction to that effect as has been sought for may be issued.

5.Per contra, the learned Standing Counsel for the third respondent would submit that no doubt 12(3) settlement had been reached, where favourable decision has been taken in favour of the petitioner. Pursuant to the settlement, the petitioner should have approached the competent Labour Court where he would be able to get an award and the said award would have been implemented by the respondents. Without resorting to the said course of action, the petitioner has been repeatedly requesting the respondents by way of representation. Therefore, the entitlement or otherwise of the petitioner has been considered and the third respondent has passed the impugned order stating that since the petitioner has been terminated on 17.04.1982, as per Pension Rule 21, there is no scope to give pension to the petitioner.

6.This Court has considered the rival submissions made by both sides.

7.It is not in dispute that the petitioner while he was working as Conductor in the respondent Corporation was removed from service on 17.04.1982. The said termination order was the subject matter in the 12(3) Settlement reached between the parties and as per the said settlement, the order of termination has been adjudged as order without authority and therefore, the same is liable to be set aside.

8.In view of the settlement reached by the parties, which has been accepted by the third respondent Corporation, the only reason adduced through the impugned order dated 27.08.2012 is that the petitioner had been removed from service on 17.04.1982 and therefore he would not be entitled for pensionary benefits, cannot be held good. Moreover, in this kind of situation as noted in the said judgment made in W.P.No.8760 of 2007 dated 06.12.2007, wherein the learned Judge on paragraph 5 and 6 has given direction to reconsider the issue based on the settlement reached between the parties and while doing so, the denial of service benefit has also to be looked as per G.O.Ms.No.42 Transport Department dated 27.05.2005. The present fact also squarely falls on the category of service cases, which has been dealt with by the learned Judge in the judgment cited supra. Therefore, this Court is of the considered view that based on the said judgment as well as the settlement



reached between the parties, which has been published, the petitioner shall be entitled to claim pension and the retirement benefits. For this benefits though repeated representations have been made and now since the same has been rejected by the third respondent, this Court feels that while quashing the impugned order, the matter can be remanded to the third respondent for passing appropriate orders.

9. In the result, the Writ Petition is disposed of with the following directions:

(i) the impugned order dated 27.08.2012 is quashed.

(ii) The matter is remanded back to the third respondent for reconsideration in the light of the settlement between the parties as well as the judgment of this Court made in W.P.No.8760 of 2007 and also on the basis of G.O.Ms.No.42 Transport Department dated 27.05.2005.

(iii) For the said consideration necessary proposal have to be forwarded by the Depot Manager or any other in charge, after getting copy of the same from the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(iv) In the light of the above direction, after considering the proposal the third responded in turn forward the same to first respondent. The first respondent who in turn on receipt of proposal from the third respondent shall pass appropriate orders extending the pensionary benefits to the petitioner payable to him within a period of six weeks therefrom.

10. With these directions, this Writ Petition is disposed of. No costs.

sd/-

Assistant Registrar(co)

/True copy/

Sub Assistant Registrar

To

1. The Secretary,  
The Government of Tamilnadu,  
Transport Department,  
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+1cc to Mr.B.Christopher, Advocate sR.No.11275  
+1cc to Mr.K.Sathiya Singh, Advocate SR.No.11409/17  
+1cc to Mr.P.Gunasekaran, Advocate Sr.No.11556/17

sj  
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