

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.275 of 2018
and CMP No.1981 of 2018

1. State Express Transport,
Corporation Tamil Nadu Ltd.,
Rep. By its Managing Director,
Pallavan Salai, Chennai 600 002.
 2. General Information Officer-cum-Secretary,
State Express Transport Corporation,
(Tamil Nadu Division) Limited,
Pallavan Salai, Chennai 600 002.
- ... Appellants

versus

G.Sanjeevi

... Respondent

Appeal filed against the order passed by this Court dated 28.09.2012 passed in W.P.No.10229 of 2007.

WP.10229 of 2007

Writ Petition on filed under Article 226 of the constitution of India to issue a writ of certiorarified Mandamus calling for the records relating to the proceedings of the 2nd respondent herein in LETTER NO.77404/PO.THA.A/A.VE.PO.KA/2007 and quash the order dated 19.02.2007 made therein and consequently direct the 1st responders to pay pensionery benifits and other retirement benifits such as earned leave benifits medical benifits etc. to the petitioner

For Appellants : Mrs.S.Rajeni Ramadass

For Respondent : Mr.Sanjeev Kumar
for M/s.Royan Law Associates

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge dated 28.09.2012 allowing the Writ Petition in WP No.10229 of 2007.

2. The respondent had challenged the proceedings of the appellant Corporation dated 19.02.2007, in and by which, his claim for pension was rejected on the ground that he has not completed the qualifying service of 10 years.

3. The respondent was appointed as a Security Guard in the appellant Corporation in November 1973. A Charge Memo was served on him on 15.04.1980 requiring him to submit his explanation. After the receipt of the explanation the enquiry was held on 25.06.1980. The respondent was placed on suspension since 01.06.1980. Subsequently, another charge memo was served on 11.07.1980 with different set of charges. The respondent had submitted his explanation and the enquiry came to be conducted. Pursuant to the said enquiry, the appellant Corporation dismissed the respondent from service by an order dated 07.03.1981.

4. Aggrieved the respondent raised an Industrial Dispute before the Conciliation Officer, Tirunelveli and the Conciliation failed. Thereafter, the Government refused to refer the matter to the Labour Court. This refusal was challenged by the respondent in WP No.1276 of 1983 and this Court by an order dated 17.12.1986, allowed the Writ Petition and thereafter, the Industrial Dispute was referred to the Labour Court and it was numbered as ID No.4 of 1988. The Labour Court by award dated 30.09.1989 confirmed the order removing the respondent from service. Aggrieved the respondent again approached this Court in WP 1073 of 1990.

5. This Court by order dated 10.02.1999 allowed the Writ Petition and directed reinstatement of the respondent herein, with continuity of service but without back wages. The said order was implemented and eventually the respondent was reinstated in service on 05.04.1999. He attained the age of superannuation on 31.03.2002. After his Superannuation, the respondent sent a representation seeking pension, which resulted in the impugned order dated 19.02.2007 being passed denying the benefit of pension to the respondent. The two grounds on which, pension was denied were that the respondent had not completed 10 years of qualifying service and that he had not paid the

contribution towards the pension fund for the period for which he was out of service during the pendency of the proceedings before the Labour Court and as well as the Writ Petition in WP No.1073 of 1990, before this Court.

6. The learned Single Judge, who heard the Writ Petition found that the action of the appellants in denying pension to the respondent was illegal. Taking note of the fact that this Court had directed reinstatement of the respondent with continuity of service, the learned Single Judge held that the respondent should be deemed to have been in service, for the period from the date of his removal from service viz. 07.03.1981 till the date of his reinstatement on 05.04.1999.

7. Aggrieved, the appellants are before us, by way of this intra Court Appeal.

8. We have heard Mrs.S.Rajeni Ramadass learned counsel appearing for the appellants and Mr.Sanjeev Kumar, learned counsel appearing for M/s.Royan Law Associates for the respondent.

9. We must at the outset point out that the stand of the appellants is wholly unreasonable. When this Court had directed reinstatement with continuity of service in WP No.1073 of 1990 and the said order having become final, the appellants cannot now contend that the respondent should be deemed to have been out of service during the said period. Even excluding the said period, viz. the period from 07.03.1981 to 05.04.1999, on facts, we find the respondent had completed 10 years of service. The initial appointment of the respondent was on 05.11.1973 and he was removed from service on 07.03.1981. He had put in a service of 7 years 4 months and 2 days before he was dismissed from service.

10. The respondent was reinstated after the order of this Court in W.P.No.1073 of 1990 on 05.04.1999 and he attained the age of superannuation on 31.03.2002. Thus, between 05.04.1999 and 31.03.2002, the respondent had served in the appellant Corporation for a period of 2 years 11 months and 26 days. As already stated, the respondent had served for a period of 7 years 4 months 2 days, before his dismissal from service and for a period of 2 years 11 months and 26 days, after his reinstatement. Thus, the total period of service rendered by the appellant is 10 years 3 months and 28 days. Therefore, either way the claim of the appellant Corporation has no basis.

11. In fact, the learned Single Judge had given liberty to the appellant Corporation to deduct the contribution payable by the respondent for the period between 07.03.1981 and 05.04.1999

from the arrears of pension payable to him. Hence, we do not find any illegality or infirmity in the order of the learned Single Judge. This Appeal deserves to be dismissed and the same is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Managing Director,
State Express Transport,
Corporation Tamil Nadu Ltd.,
Pallavan Salai, Chennai 600 002.
2. General Information Officer-cum-Secretary,
State Express Transport Corporation,
(Tamil Nadu Division) Limited,
Pallavan Salai, Chennai 600 002.

+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.42211

+1cc to Mr.Royan Law Associates, Advocate, S.R.No.41297

W.A.No.275 of 2018
and CMP No.1981 of 2018

VBA (CO)
GSP (19/07/2018)

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