

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.5543 of 2015

The Managing Director
Metropolitan Transport Corporation (Chennai) Ltd
Palavan Illam, Chennai - 600 002.

..Petitioner

Vs.

1.Thiru G.Parthiban

2.The Secretary to Government
Transport Department
Fort St.George, Chennai 600 009.

3. The Presiding Officer
I Additional Labour Court
City Civil Court Annexure Buildings
Chennai - 600 104.

..Respondents

For Petitioner	:	Mr.M.Chidambaram
For Respondents	:	Mr.K.Malaikannu - for R1
		Mr.N.Srinivasan,
		Addl.Govt.Pleader for R2
		R3 - Labour Court

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari to call for the records pertaining to the award dated 04.09.2014 made in C.P.No.627 of 2010 on the file of the third respondent herein and quash the same.

O R D E R

This writ petition has been filed by the management seeking to quash the order passed by the labour court in C.P.No.67 of 2010 dated 04.09.2014. The management has challenged the validity of the order passed under section 33-C(2) of the Industrial Disputes Act on the ground that there was no prior order or award to decide the claim amount under Section 33-C(2) of the Industrial Disputes Act, 1942.

2. The main contention raised by the management is that the workman/first respondent has not completed ten years of qualifying service in order to become eligible for pension and

therefore the award passed by the labour court is illegal and it has to be set aside. The management relied upon G.O.Ms.No.42 Transport (RW) Department dated 27.05.2005, under which the period which are to be excluded for calculation of qualifying service for payment of pension is a) Period of daily paid service b) Leave on loss of pay and c) suspension treated as specific punishment. These three categories are specifically excluded while arriving at the qualifying service. Learned counsel for the management submits that in the typed set of papers, calculation has been furnished by the management, by which the workman has only qualifying service of 8 years 9 months and 8 days and not 10 years, and therefore he is not entitled to claim pension and therefore the award passed in C.P.No.627 of 2010 has to be set aside.

3. A perusal of the calculation provided by the management would go to show that the said calculation did not include any period of suspension or loss of pay i.e., from 1973 to 1975. During the period from 1973 to 1975, the leave on loss of pay i.e., period of non qualifying service is only 2 months and 6 days. The detailed calculation has been furnished in Page 29 of the typed set of papers. Insofar as the daily wages period is concerned, the learned counsel for the workman / first respondent relies upon the decision of the Honourable Supreme Court in "The State of Tamilnadu -Vs- S.Sebastin and Others", wherein it was held that the services of daily rated employees cannot be excluded from calculation and it will be violative of Article 14 of the Constitution of India and the said service period are to be treated as relevant for the calculation of qualifying service.

4. Under the circumstances, the period of qualifying services as submitted by the learned counsel for the workman is 10 years 3 months and 4 days. From this calculation, if two months period is excluded towards leave on loss of pay, the net qualifying services comes to 10 years and one month. Therefore, the labour court, while calculating the qualifying service, has correctly applied terms of GO.Ms.No.42 and hence the order of the labour court cannot be faulted with.

5. Learned counsel for the workman would submit that there must be a direction to the petitioner corporation to deposit the amount of pension within a time frame as otherwise the workman will be driven to another round of litigation.

6. Learned counsel for the petitioner / management submits that the appropriate form for disbursement of pension is the EPF trust and not the petitioner / corporation and there cannot be any such direction to the petitioner for the disbursement of the pension.

7. Considering the facts and circumstances of the case, the writ petition is liable to be dismissed and it is accordingly dismissed. No costs. Consequently, connected W.M.P. is closed. However, the petitioner- corporation / the Pension Trust shall comply with the order of the labour court dated 04.09.2014 in C.P.No.629 of 2014, within a period of four weeks from the date of receipt of a copy of this order.

KST

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government
Transport Department
Fort St.George, Chennai 600 009.

2. The Presiding Officer
I Additional Labour Court
City Civil Court Annexure Buildings
Chennai - 600 104.

+1cc to Mr.M.Chidambaram, Advocate S.R.No.68777
+1cc to Mr.V.Balamurugan, Advocate S.R.No.68781
+1cc to the Government Pleader, S.R.No.69653

KR/19/11/18

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