

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.03.2018
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.20271 of 2012

P.Sengamalai

... Petitioner

Vs

1.The Managing Director,
Tamilnadu State Transport Corporation
(Salem) Limited, Head Office,
Salem - 636 007.

2.The General Manager,
Tamilnadu State Transport Corporation,
(Salem) Limited,
Salem-636 007.

3.The Company Secretary,
TNSTC, (Salem) Ltd.,
Salem-7.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records connected with the orders passed by the 3rd respondent in Proc. No.11527/PF2/PF/TNSTC/Salem/2011/dated 30.09.2011, quash the same and also to direct the respondents to settle immediately all the terminal benefit payable to the petitioner with interest.

For Petitioner : Ms.S.Girija
For Respondents : Mr.R.Vimal for
M/s.A.Antony Arokiaraj

सत्यमेव जयते
O R D E R

The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records connected with the orders passed by the 3rd respondent in Proc. No.11527/ PF2/ PF/ TNSTC/Salem/2011/dated 30.09.2011, quash the same and also to direct the respondents to settle immediately all the terminal benefit payable to the petitioner with interest. "

2. The case of the petitioner is as follows:-

The petitioner originally joined as driver under the

respondent Corporation on 01.04.1982. He was found unfit for the post of driver subsequently and therefore, he was discharged from service on medical grounds on 01.03.1996. After the discharge, the petitioner was provided with alternative employment as Helper by treating him as a fresh appointee without taking account of his past service.

3. In the above circumstances, the petitioner approached this Court in W.P.No.11276 of 2011 and this Court disposed of the writ petition on 29.11.2011 by directing the respondents that the petitioner should be restored of his right of employment and promotion. Before issuance of a direction, the petitioner has also given an undertaking before this Court that he would fore-go the back wages during the relevant period.

4. In pursuance of the direction passed by this Court, by proceedings dated 30.07.2011, the respondent implemented the order. Thereafter, the petitioner on attaining the age of superannuation, retired from service on 31.08.2011. After retirement, when the petitioner approached the respondent for terminal benefits, he was informed that his terminal benefits would be settled, only he repaid the management contribution towards Provident Fund which was paid to him at the time of discharge on 01.03.1996 and therefore, unless the petitioner reimburse the management contribution along with the accrued interest, the termination benefits would not be settled. The Corporation has claimed a sum of Rs.1,53,572/- including accrued interest on its contribution amount of Rs.35,146/-, The said proceedings is put to challenge in the present writ petition.

5. Learned counsel for the petitioner would submit that the interest as claimed by the Corporation on its contribution towards Provident Fund is invalid and cannot be countenanced in law for the simple reason that the petitioner himself had foregone backwages for the period in question. Therefore, the question of payment of interest on the management contribution did not arise in the present case. More over, such a demand by the Corporation was not authorized by regulation and in any event, the Corporation cannot withheld the terminal benefits of the petitioner.

6. Upon notice, Mr.R.Vimal, the learned counsel entered appearance on behalf of the respondents and filed a counter affidavit.

7. In the counter affidavit, the statement has been enclosed as to the payment due from the petitioner including interest portion of it. The objection of the Corporation as stated in paragraphs 5 and 6 in the counter affidavit are reproduced hereunder:

"5.I state that the petitioner was employed as a driver on 01-04-1982. He was discharged from his services vide order dated:01-03-1996, due to medical invalidation. He was provided with alternative employment as a fresh entrant Helper on 22-10-98. The petitioner has filed a W.P.no.11276/2011 before the Hon'ble High Court for continuity of service and backwages with pay protection etc. At the time of discharged his services from driver to Helper, he was settled the entire Terminal Benefits including the share of the Provident Fund amount of the employer of Rs.35,146/-.

6. I state that the Hon'ble High Court has ordered on 29.04.2011, the petitioner is entitled to get all promotional and other benefits except backwages. The above order of the Hon'ble High Court was complied. To settle/sanction of pension he was directed to remit P.F. Employer contribution of Rs.35,146/- paid to him with interest to a total sum of Rs.1,53,572/- by letter dated 30.09.2011 and the intimation letter was received in person by the petitioner."

Therefore, the learned counsel for the Corporation would submit that the Corporation is entitled to the amount as claimed from the petitioner and only thereafter, they can consider for releasing of the terminal benefits.

8. This Court has given its consideration to the rival submissions of the learned counsel for the parties, perused the pleadings and materials placed on record.

9. This Court is unable to see as to how the Corporation is justified in claiming the interest on its contribution from the employee, particularly in the teeth of the fact that the employee himself has given an undertaking foregoing the backwages apparently running to lakhs of rupees before this Court in the earlier proceedings. Such being the case, it is unconscionable for the State Corporation to claim interest from its employee towards its contribution which was of course settled at the time of discharge. At best, the employee is only liable to pay actual contribution that was settled in his favour viz., the sum of Rs.35,146/- and not any accrued interest on the said amount. Therefore, the claim of the Corporation for Rs.1,53,572/- cannot be sustained both in law and on facts.

10. In view of the above, this Court is of the view that the impugned order claiming the above said amount is liable to be struck down and therefore, the same is hereby set aside. The respondents are directed to release all the terminal benefits due to the petitioner after deducting the sum of Rs.35,146/- from the amount payable to the petitioner. The respondents are directed to comply with the direction within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above direction, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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(Salem) Limited,
Salem-636 007.

3.The Company Secretary,
TNSTC, (Salem) Ltd.,
Salem-7.

+1 cc to Ms.S.Girija Advocate sr 17714

+1 cc to M/s.A.Antony Arockiaraj Advocate sr 18076

W.P.No.20271 of 2012

svi(co)
aa04/04/2018