

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.20592 of 2012

K.Pandian

... Petitioner

Vs

1.State Express Transport
Corporation Limited,
Rep by its Managing Director,
Thiruvalluvar Illam,
Pallavan Salai, Chennai 600 002.

2.The General Manager,
State Express Transport
Corporation Limited,
Thiruvalluvar Illam,
Pallavan Salai, Chennai 600 002.

... 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 pertaining to the order dated 04.11.2004 issued by the 2nd respondent in order No.065752/A7/SETCTN/2004, quash the same in so far as not treating the 6 years period from 15.07.1999 to 03.11.2004 as duty and not paying wages and all other attendant benefits for the said period and consequently direct the respondents 1 and 2 to treat the said period as duty with continuity of service, back wages and all other attendant benefits such as increment, revision, review etc., with a consequential revision of the petitioner's salary from 04.11.2004 to the date of retirement and to pay him the revised terminal benefits by including the period from 15.07.1999 to 03.11.2004 as qualifying service and by taking into account the revised and correct pay which is payable to him as on the date of retirement, with interest, award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondents : Mr.R.P.Prathap Singh

O R D E R

Heard Mr.V.Ajoy Khose, learned counsel for the petitioner and Mr.R.P.Prathap Singh, learned counsel appearing for the respondents.

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

"To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 04.11.2004 issued by the 2nd respondent in order No.065752/A7/SETCTN/2004, quash the same in so far as not treating the 6 years period from 15.07.1999 to 03.11.2004 as duty and not paying wages and all other attendant benefits for the said period and consequently direct the respondents 1 and 2 to treat the said period as duty with continuity of service, back wages and all other attendant benefits such as increment, revision, review etc., with a consequential revision of the petitioner's salary from 04.11.2004 to the date of retirement and to pay him the revised terminal benefits by including the period from 15.07.1999 to 03.11.2004 as qualifying service and by taking into account the revised and correct pay which is payable to him as on the date of retirement, with interest, award costs."

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

The petitioner is an Ex-serviceman, was appointed as Driver on 01.04.1991 at the respondent Corporation. He was made permanent with effect from 01.02.1992. On completion of six years of service, he was given first review and was designated as Senior Driver with higher pay scale. On 03.06.1998, the petitioner joined duty in Route No.625, which was plying between Thoothukudi and Coimbatore. The vehicle in which the petitioner was driving met with serious accident while in discharge of his duties on the said date and the petitioner suffered grievous injuries on his right leg and also underwent surgery for the same.

4. Due to injury on his right leg, the petitioner became unfit for being employed as Driver. Therefore, he was discharged from service on medical grounds by order dated 15.07.1999. After being discharged from service, the petitioner made a representation for providing an alternative employment in terms of Persons with Disabilities Act, 1995. Since no action was forthcoming, the petitioner filed W.P.No.16857 of 2003, seeking to quash the discharge order dated 15.07.1999 and for a consequential direction to provide him alternative employment. This Court by order dated 27.06.2003, was pleased to direct the respondent Corporation to consider the petitioner's request for alternative employment in terms of the G.O.No.746 dated

02.07.1981 and also in terms of the order passed by the Hon'ble Supreme Court of India, reported in 2003 (4) SCC 524.

5. The writ appeal which was preferred against the order, was also dismissed and the learned Division Bench of this Court while dismissing the writ appeal in W.A.No.2542 of 2004, vide its order dated 27.06.2003, directed the Corporation to implement the order passed by the learned Single Judge. Thereafter, by order dated 30.09.2004, the petitioner was given alternative employment and appointed as fresh entrant as Helper and was placed in the consolidated pay of Rs.3,290/- for a period of two years and the petitioner was informed that only on the satisfactory service of two years on consolidated pay, he would be brought on the regular time scale of pay.

6. In the above said circumstances, the petitioner filed a contempt petition and during the pendency of the contempt petition, the respondent Corporation issued revised order dated 04.11.2004 by giving the petitioner pay protection. However, while giving pay protection, the respondents had not granted him any notional increments during the period when he was out of employment. On attaining the age of superannuation, the petitioner retired from service on 31.12.2011. While issuing service certificate of the petitioner, the respondents excluded the period of non-employment from the total years qualified by the petitioner.

7. In view of the same, the petitioner was paid gratuity only for fifteen years of service, although he rendered 21 years of service and the pension was also paid only for fifteen years by excluding six years when he was not in employment. Therefore, he is before this Court, seeking for the relief as stated supra.

8. The learned counsel for the petitioner would submit that the gap in the employment of the petitioner between 15.07.1999 till 03.11.2004, has to be treated as qualifying service in terms of Section 47 of the Persons with Disabilities Act, 1995 and the exclusion of the said period for the purpose of calculation of gratuity and other pensionary benefits, cannot be a valid exclusion in the eye of law. The learned counsel would also rely on the decision passed by this Court in W.P.No.9872 of 2011 dated 06.09.2011, wherein, the learned Judge as he then was, has given a direction as follows:-

"8. Hence, the writ petition is disposed of, giving direction to the respondents to provide alternative employment to the petitioner with pay protection and other benefits from 12.6.2002 within a period of two weeks from the date of receipt of a copy of this order. The petitioner is entitled to get the higher salary only from the date of passing a fresh

order giving alternative employment i.e., within two weeks as stated above. The period from 12.6.2002 till the date of giving alternative employment in terms of Section 47(1) of the Act, shall be counted for all other purposes, viz., promotion, pay fixation etc. The respondent-Management is directed to pay the Provident Fund contributions for the above period. No costs."

Therefore, the learned counsel would submit that the period has to be counted for all the purposes.

9. The learned counsel for the petitioner would also rely on the recent decision of this Court passed by yet another learned Single Judge in W.P.No.3588 of 2011, dated 11.12.2017. In the said order, the learned Judge dealt with similar claim and allowed the writ petition as found in paragraph Nos.9, 10, 11 and 12, are reproduced below:-

"9. This Court has considered the rival submissions made on either side and perused the pleadings and materials placed on record.

10. As regards the application of Section 47 of the Act is concerned, it is to be noted that the said Section has to be complied with in letter and spirit and the implementation of the same cannot be allowed to suit the views of the management. The implementation of the said Section is mandatory as per the Act, therefore, any failure to implement it cannot be countenanced in law.

11. The grievance of the petitioner is that his pay fixation and other benefits has not been made properly in terms of Section 47 of the Act. Therefore, on the said ground, the petitioner has made out a case for grant of relief sought in this writ petition.

12. In the above said circumstances, this writ petition is allowed as prayed for. The respondent is directed to pass orders within a period of eight weeks from the date of receipt of a copy of this order. No costs."

Therefore, he would submit that the petitioner is entitled to grant of relief in the present writ petition.

10. On the other hand, the learned counsel appearing for the respondent Corporation would submit that the petitioner has not approached this Court in time and therefore, he is not entitled to grant of any relief. The petitioner having retired from service on 31.12.2011, has leisurely approached this Court in 2012, for counting of his period of non-employment from 15.07.1999 to 03.11.2004. Therefore, the writ petition need not be entertained as being belated and hit by latches.

11. Although there appears to be some force in the contention of the learned counsel appearing for the respondent Corporation that the petitioner has approached this Court leisurely after many years for counting of his period of non-employment, at the same time, it has to be seen that in the matter of fixation of pay and pensionary benefits, the cause of action is rather continuous. Moreover, the petitioner had served the Corporation and retired from service only in 2011. Thereafter, he had chosen to approach this Court. Although there is some delay in approaching this Court, but, in view of the circumstances of the case that delay cannot be set to be fatal to the claim made by the petitioner.

12. The learned counsel appearing for the respondent Corporation cannot have any quarrel with decisions relied on by the learned counsel for the petitioner. On several occasion, this Court has come to the rescue of the employee in regard to the implementation of the provisions of the Persons with Disabilities Act, 1995. On many occasions, this Court allowed the similar claim and two such cases are cited by the learned counsel for the petitioner which squarely apply to the facts of the present case as well.

13. In the above said circumstances, this Court has no hesitation in allowing the writ petition. The impugned order dated 04.11.2004 issued by the 2nd respondent in order No.065752/A7/SETCTN/2004 is hereby set aside. There shall be a direction to the respondents to treat the period of non-employment of the petitioner from 15.07.1999 to 03.11.2004, as one of duty and the same shall be counted as qualified service for the purpose of notional fixation of pay and pensionary benefits. On such treatment of the period, the petitioner shall be entitled to all the pensionary benefits as admissible to him. The consequential order to that extent has to be passed by the respondent Corporation, within a period of eight weeks from the date of receipt of a copy of this order. It is also made clear that the respondent Corporation shall make Provident Fund Contribution from their side to the credit of the petitioner.

14. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Managing Director,
State Express Transport
Corporation Limited,
Thiruvalluvar Illam,
Pallavan Salai, Chennai 600 002.

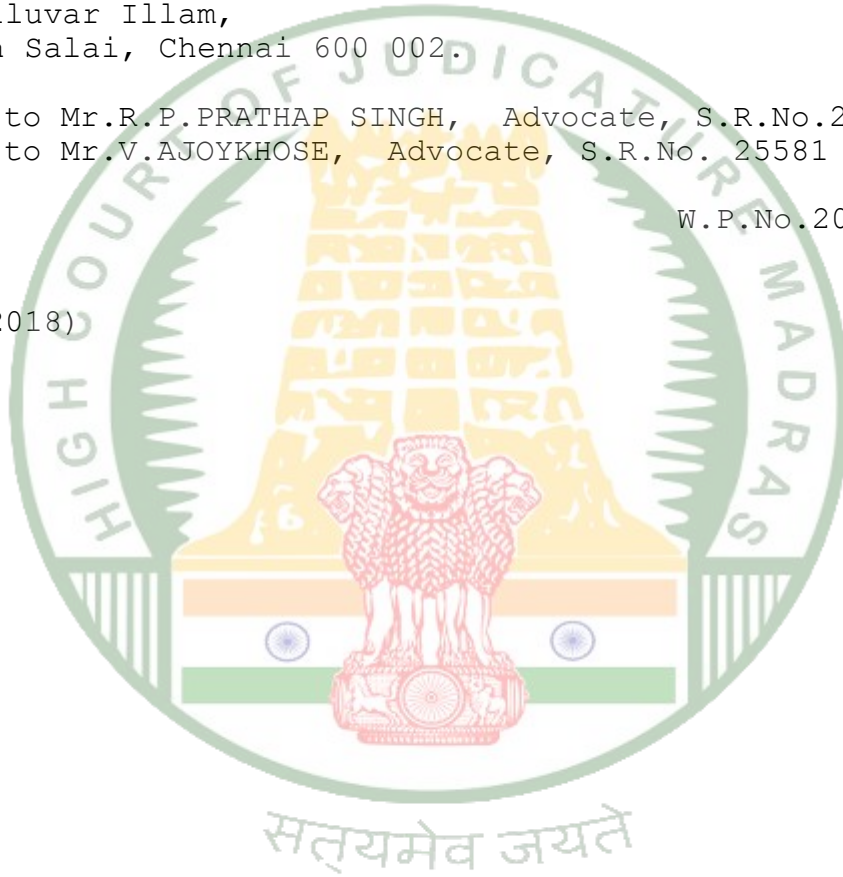
2.The General Manager,
State Express Transport
Corporation Limited,
Thiruvalluvar Illam,
Pallavan Salai, Chennai 600 002.

+1cc to Mr.R.P.PRATHAP SINGH, Advocate, S.R.No.25753

+1cc to Mr.V.AJOYKHOSE, Advocate, S.R.No. 25581

W.P.No.20592 of 2012

SR(CO)
TR(28/04/2018)



WEB COPY