IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.2725 of 2012
and
M.P.No.1 of 2012

1. The Managing Director
The State Express Transport
Corporation Limited,
Division No.1, Pallavan Salai,
Chennai 600 002.

2. The Chief Accountant Officer
The State Express Transport
Corporation Limited,
Division No.1, Pallavan Salai,
Chennai 600 002. ...Appellants/Respondents 2 & 3

..Vs..

1. A.V.Sheik Allauddin ... 1st Respondent/petitioner

2. The Government of Tamilnadu
rep. by its Secretary,
Transport Department,
Fort St. George, Chennai - 600 009.
...2nd Respondent/1st Respondent

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 06.06.2012 passed in W.P.No.36560 of 2002.
PRAYER IN WP.36560 OF 2002:

Petition filed Under Article 226 of the Constitution of India praying for writ of Certiorarified mandamus to call for the entire records particularly a letter No.30308/Y4/Alipoga/02, dated 02.08.2002 issued by the third respondent and quash the same and consequently direct the second respondent to calculate and fixed the pensionary benefit and other benefit and other benefits between the period from 1967 to 30.06.1999 and pay the same for the interest of Justice.

For Appellants : Ms.Kala Ramesh
For Respondents: Mr.G.Saravannan (for R1)
: Mr.V.Anandha Moorthy
Special Government Pleader (for R2)

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The learned single Judge directed the appellants to consider the entire period of service of the first respondent right from 1967 for the purpose of fixing his pension and paying the retirement benefits. The order is under challenge at the instance of the State Express Transport Corporation, primarily on the ground that the dismissal order passed against the first respondent earlier was withdrawn on account of the compromise arrived at between the parties and his services were regularized with effect from 1 October 1988. In short, it is the contention of the appellants that the services of the first respondent would be taken into account only from the date on which his services were regularized viz., 1 October 1988 Feeling aggrieved by the direction given by the learned single Judge, the appellants have come up with the intra Court appeal.

2. We have heard the learned counsel for the appellants. we have also heard the learned counsel for the respondents.

3. The first respondent was initially appointed as a conductor in 1967 in Tamil Nadu State Transport Corporation. The Corporation appears to have taken action against him on account of his unauthorized absence. The first respondent was dismissed from service and subsequently, the matter was compromised between the parties. The first respondent was thereafter reinstated into service. His services were regularized with effect from 1 October 1988 The first respondent claimed pension on the ground that he had put in more than 10 years of regular service.

4. The Employees Provident Fund Trust of Tamil Nadu State Transport Corporation, in its report pointed out that the first respondent had only 9 years 1 month and 6 days of service and as such, he was not eligible for pension. The order passed by the second respondent was challenged before the Writ Court.

5. The learned single Judge opined that the first respondent retired from service on 30 June 1999 and the period from 1967 onwards, till the date of his retirement should be given credence for fixing the pension.

6. There is no dispute that the first respondent was dismissed from service on account of his continuous absence. Thereafter, he was appointed afresh. The services of the first respondent was regularized from 1 October 1988. The first respondent on attaining the age of superannuation, retired from service on 30 June 1999. He approached the 2nd respondent for payment of retirement benefits. The case was negatived by the Employees Provident Fund trust, on the ground that he had not put in the required years of service. Since 1 year and 7 months and 23 days was treated as leave (loss of pay) the said period cannot be taken be taken for computing the total period. There is absolutely no merit in the contention taken by the Employees Provident Fund trust. The counter affidavit filed by the State does not contain any indication with regard to the absence of the first respondent and the subsequent order passed for declaring 1 year and 7 months and 23 days as non-qualifying service (loss of pay). Even if the period of 1 year 7 months and 23 days was considered as leave period without pay, the said period should be counted for calculating the total period of service. The appellant would not be justified in imposing the double punishment on the first respondent, one by treating the period as loss of pay and the other by treating it as a non qualified service for the purpose of pension. We are therefore, of the view that the entire period from 01.10.1988 should be taken for the purpose of fixing the pension.

7. In the subject case, the first respondent is eligible to get the pension as he has completed 10 years of service. We are therefore, of the view that the order passed by the learned single Judge has to be modified.

8. The order dated 06 June 2012 in W.P.No.36560 of 2002, directing the appellant to count the services from 1967 is set aside. We direct the appellants to calculate the services of the first respondent from 01.10.1988 to 30 June 1999, which would come to ten years. There shall be a direction to the appellants to pay pension to the first respondent taking into account his completion of ten years of continuous service.
There shall be further direction to the appellants to pass a consequential order sanctioning the pension and for disbursement of the amount due to the first respondent, within a period of two months from the date of receipt of a copy of this Judgment.

9. The order passed by the learned single Judge is modified to the extent indicated above. The intra court appeal is allowed in part. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To

1. THE MANAGING DIRECTOR
   THE STATE EXPRESS TRANSPORT
   CORPORATION LIMITED,
   DIVISION NO.1, PALLAVAN SALAI,
   CHENNAI 600 002.

2. THE CHIEF ACCOUNTANT OFFICER
   THE STATE EXPRESS TRANSPORT
   CORPORATION LIMITED,
   DIVISION NO.1, PALLAVAN SALAI,
   CHENNAI 600 002.

3. THE SECRETARY
   THE GOVERNMENT OF TAMIL NADU
   TRANSPORT DEPARTMENT,
   FORT ST GEORGE, CHENNAI 9.

+1cc to MR.G.SARAVANAN, Advocate, S.R.No. 15032
+1cc to MR.KALA RAMESH Advocate, S.R.No. 14876
+1cc to the Government Pleader, S.R.No. 15406

W.A.No.2725 of 2012

rsy(CO)
TR(23/03/2018)