

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.3339 of 2013

P.Shanmugam

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Transport Corporation,
(Salem) Ltd., Head Office,
Salem 636 007.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Salem Div.1) Head Office,
12, Ramakrishna Road, Salem 636 007.

3.The Assistant Manager
(Provident Fund & Pension),
Tamil Nadu State Transport Corporation
(Salem) Ltd., Salem 636 007.

.... 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 proceedings dated 09.11.2009 passed by the third respondent in Lr.No.1033/P1/Pension/TNSTC/09 quash the same and also direct the respondent to compute and pay immediately the pension, gratuity and other legitimate monetary entitlements with interest to the petitioner taking into account his 31 years of unblemished total length of service under the respondent Corporation on the strength of the orders of continuity of service granted by this Court in Writ Appeal No.140 of 2009 after duly deducting the dues and admissible deductions.

For Petitioner : Ms.S.Girija

For Respondents : Mr.R.K.Gandhi, SC

O R D E R

Heard Ms.S.Girija, learned counsel for the petitioner and Mr.R.K.Gandhi, learned Standing counsel appearing for the respondents.

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

"To issue a Writ of Certiorari and Mandamus, to call for the records connected with the proceedings dated 09.11.2009 passed by the third respondent in Lr.No.1033/P1/Pension/TNSTC/09 quash the same and also direct the respondent to compute and pay immediately the pension, gratuity and other legitimate monetary entitlements with interest to the petitioner taking into account his 31 years of unblemished total length of service under the respondent Corporation on the strength of the orders of continuity of service granted by this Court in Writ Appeal No.140 of 2009 after duly deducting the dues and admissible deductions."

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

The petitioner joined as Conductor on 01.02.1977 in the respondent Corporation. On being found unfit for the post of conductor, he was discharged from service on 06.03.1996, based on the medical opinion dated 29.01.1996. After his discharge, the petitioner submitted a representation to the Corporation, requesting them to provide alternate employment, which request was belatedly considered and by proceedings dated 22.10.1998, the petitioner came to be appointed as Helper by treating the appointment as a fresh one. The petitioner accepted the employment as he had no other option in order to earn his livelihood. On being appointed by proceedings dated 22.10.1998, the petitioner joined the service as Helper on 02.11.1998. After serving as Helper for about nine years, the petitioner stood retired from service on attaining the age of superannuation on 31.05.2007. After his retirement, the petitioner came to know that similarly discharged persons who were provided with alternative employment, were given pay protection and continuity of service.

4. In the said circumstances, the petitioner submitted a representation for similar relief. Since there was no response to his representation, the petitioner approached this Court in W.P.No.32843 of 2006, seeking pension by counting the entire period of service from 01.02.1977. The learned Judge of this Court by an order dated 20.08.2008, dismissed the writ petition on the ground of laches. As against the order of the learned Single Judge, a writ appeal was filed in W.A.No.140 of 2009 and the appeal was disposed of by the learned Division Bench of this Court on 23.03.2009. The order passed in the writ appeal is extracted below:-

"The appellant herein was discharged from service as Conductor of the respondent Transport Corporation

on medical grounds on 06.03.1996 and subsequently, he was reinstated into service on 22.10.1998, but on his reinstatement, he has been placed in another position, which is commensurate with his health condition. The grievance of the appellant is that he should be provided with back wages and continuity of service.

2. Learned counsel for the appellant has very fairly submitted that the appellant is not pressing for back wages.

3. In view of the fact that the appellant has been taken back on duty, in our view, the correct course would be that he should be granted continuity of service. We therefore, allow this appeal and set aside the order of the learned single Judge, substituting the same with a direction to the respondent to grant continuity of service to the appellant herein. There will be no order as to costs."

5. After the order passed in the writ appeal, the petitioner submitted a representation for grant of pensionary benefits by duly counting the past services rendered by him as Conductor. In response to the representation, by proceedings dated 09.11.2009, the respondent replied that the grant of pensionary benefits would be considered on payment of Rs.2,30,180/-, towards interest for the amount settled to the petitioner at the time of his discharge and retirement. The said demand by the respondent Corporation is put to challenge in the present writ petition.

6. The learned counsel for the petitioner would submit that the grant of pay protection and alternative employment is mandatory on the part of the Corporation and therefore, it is not open to the respondent Corporation to demand interest as indicated in the impugned communication dated 09.11.2009. In any event, once the learned Division Bench of this Court has held that the petitioner was entitled to continuity of service on the basis that the petitioner has foregone his back wages for the period of his non-employment between the date of his discharge and the re-employment, the demand of payment of interest for the amount settled to the petitioner at the time of his discharge and retirement, is without any justification.

7. The learned counsel for the petitioner would also submit that in similar circumstances, this Court has considered the claim of the petitioner therein and allowed the writ petition in W.P.No.20271 of 2012 dated 08.03.2018. The learned counsel would submit that the issue raised in the present writ petition is squarely covered by the said decision and would particularly, draw the attention of this Court to paragraph Nos. 5 to 10, which are reproduced below:-

"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."

8. Upon notice, learned standing counsel appearing for the respondents entered appearance and made his submissions.

9. The learned counsel appearing for the respondents would submit that as per the regulations, once the amount received has to be refunded with interest, in case the employee seeks pension. In this case, the total amount which was settled in favour of the employee is Rs.75,003/- and the amount was settled long ago. Therefore, any pensionary benefits payable on the retirement of the employee on 31.05.2007, can be considered only if the interest is paid on the amount settled in favour of the employee.

10. The above submission made on behalf of the Corporation was considered and discountenanced by this Court in the aforesaid decision. This Court would reiterate that such huge demand of interest to the tune of Rs.2,30,180/- cannot be justified under any circumstances, particularly, for an employee who stood retired as only as a last grade servant of the Corporation. In any event, the respondents are legally bound to provide alternative employment to the petitioner immediately on his discharge on medical grounds and ought to have granted pay protection at that point of time itself. The failure on their part cannot be taken advantage by the Corporation to demand such huge amount towards interest portion alone.

11. This Court was informed that even after lapse of a decade from the date of his retirement, no pensionary benefit has been released to the petitioner. This Court is unable to appreciate as how the Corporation can keep this retired employee without payment of retirement benefits for more than ten years, on the basis of such invalid demand. Therefore, this Court is in agreement with the learned counsel for the petitioner that the decision rendered in the aforesaid writ petition can be squarely applied to the present case.

12. In the above circumstances, the impugned order in Lr.No.1033/P1/Pension/TNSTC/09 dated 09.11.2009, is hereby set aside, in so far as the claim of interest is concerned. The respondents are directed to immediately sanction pensionary benefits with arrears of pension to the petitioner. While sanctioning pensionary benefits, it is open to the Corporation to deduct only the actual amount which was settled in favour of the petitioner at the time of his discharge/retirement and not any amount towards interest claim. The order shall be complied with strictly as stated above, within a period of eight weeks from the date of receipt of a copy of this order, without any further delay, since the employee had retired from service on 31.05.2007.

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

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Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gsk

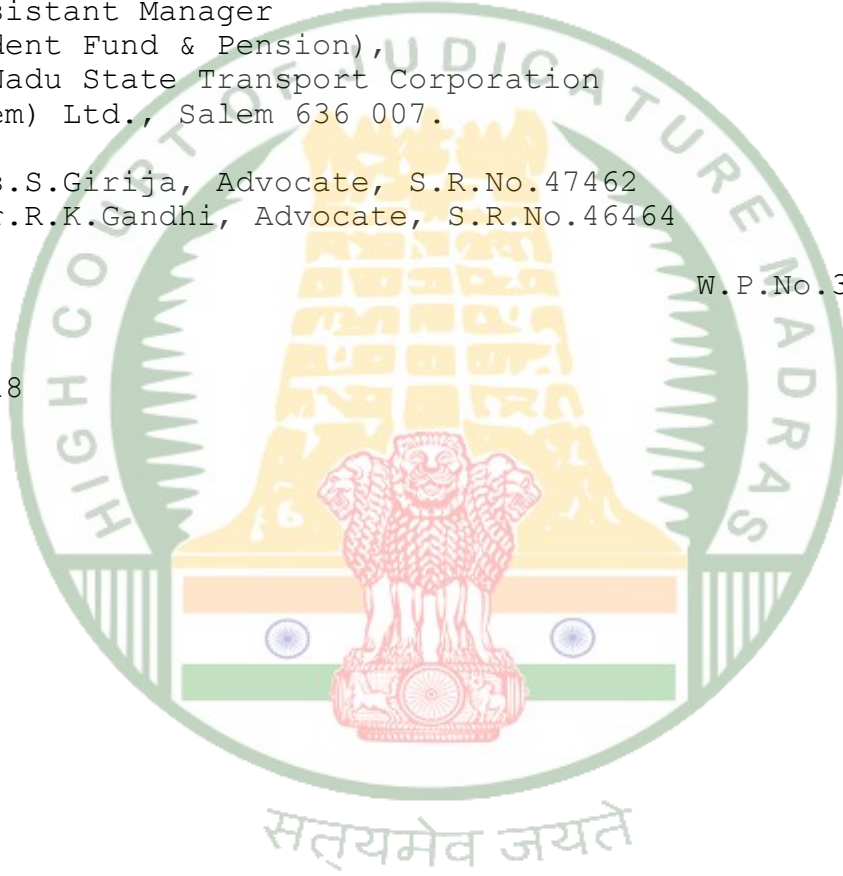
To

1. The Managing Director,
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(Provident Fund & Pension),
Tamil Nadu State Transport Corporation
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+1cc to Ms.S.Girija, Advocate, S.R.No.47462
+1cc to Mr.R.K.Gandhi, Advocate, S.R.No.46464

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CS/09/08/18



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