

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.23998 of 2012

K.Natarajan

... Petitioner

Vs

1.The Managing Director,
Tamilnadu State Transport
Corporation (Salem) Ltd.,
Formerly Anna Transport Corporation Ltd.,
Salem-636 007.

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

3.The Assistant Manager,
Tamilnadu State Transport
Corporation (Salem) Ltd.,
Formerly Anna Transport Corporation Ltd,
Salem-636 007.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus calling for the records of the third respondent relating to the orders in L No.E5/99/TNSTC (Salem) 2012, dated 06.07.2012, to quash the same and to issue consequential directions to the respondents to grant review benefits to the petitioner taking into account his service from 14.02.1977 as conductor on daily wage basis and to revise the 2nd, 3rd and 4th review benefits and to disburse the different monetary benefits.

For Petitioner : Mr.Muthukumaran

For Respondents : Ms.Rajeni Ramadoss

O R D E R

Heard Mr.Muthukumaran, learned counsel appearing for the petitioner and Ms.Rajeni Ramadoss, learned Standing Counsel appearing for the respondent Corporation.

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

"To issue a writ of Certiorarified Mandamus calling for the records of the third respondent relating to the orders in L No.E5/99/TNSTC (Salem) 2012, dated 06.07.2012, to quash the same and to issue consequential directions to the respondents to grant review benefits to the petitioner taking into account his service from 14.02.1977 as conductor on daily wage basis and to revise the 2nd, 3rd and 4th review benefits and to disburse the different monetary benefits."

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

The petitioner was initially appointed as Trainee conductor recruited through Employment Exchange in the erstwhile Anna Transport Corporation Ltd., Salem, on 13.12.1976. He was subsequently appointed as Conductor temporarily on 12.02.1977 and regularly absorbed as Conductor, on 22.01.1979, in the scale of pay of Rs.170-5235 plus allowances. Thereafter, he was re-designated as Record Clerk dated 15.06.1982 and subsequently, review his service as Record Clerk was undertaken and his pay was re-fixed in the higher scale of pay of Rs.380-10-530 on review with effect from 01.05.1983 and subsequently, the said pay fixation was cancelled and thereafter, appointed as Junior Assistant with effect from 01.08.1988 taking into account his joining duty in the post of Record Clerk on 21.06.1982. To that effect, his service about 5 1/2 years from 14.02.1977 has not been taken into account.

4. In 2010, there was a settlement between workmen and Corporation providing for review benefits. While granting such benefits, his service from initial date of his appointment as Conductor from 14.02.1977 was not taken into account, but only from the date when he was appointed as Record Clerk on 21.06.1982, has been taken into account. Therefore, he made several representations to the Managing Director, there was no response forthcoming from the respondents.

5. It is seen that the last representation was submitted by the petitioner in this regard on 29.06.2012 and the same was rejected on the ground that the petitioner while he was working as Conductor was served in different Department, viz., Traffic Department and therefore, such service cannot be taken into account for the purpose of periodical review benefits. The impugned order, rejecting the claim of the petitioner, dated 06.07.2012, is put to challenge in the present writ petition.

6. The learned counsel for the petitioner would submit that the review benefits ought to be granted to the petitioner from the date of initial appointment as Conductor, i.e. from

14.02.1977 and not from the subsequent date, i.e. from 21.06.1982, when he was re-designated as Record Clerk. According to the learned counsel, the similarly placed persons were granted such benefits.

7. Per contra, the learned counsel for the respondent Corporation would vehemently oppose grant relief to the petitioner as prayed for. She would draw the attention of this Court to paragraph 7 of the counter affidavit. According to the respondent Corporation, as per Rule 37 of Common Service Rule of the Corporation, the petitioner is not entitled to count his service rendered in different Department. For better appreciation of the case of the respondents, paragraph -7 of the counter affidavit, is extracted below:-

"7.1 submit that Sec.37 of Common Service Rule of the Corporation in respect of benefits of past service to employees in the service of the Corporation selected by direct recruitment to another post is as follows:

"Sec.37: Benefits of past service to employee in the Service of the Corporation selected by direct recruitment to another post:

Notwithstanding any thing contrary in these or any other rules for the time being in force, an employee in the Service of the Corporation who is selected for appointment by direct recruitment to another post in the service of the Corporation, whether in the same or another group of Department subject to the other provisions of these or any other rules, as the case may be, shall be eligible...

(1) To carry forward the leave at his credit on the date of such appointment.

(2) To reckon his service in the new post as Continuation of his service in the former post for the purpose of calculating Gratuity due to him on his retirement from the service of the Corporation due to Superannuation or otherwise;

(3) To continue as a member of the Provident Fund established by the Corporation without being required to put

in a fresh term of qualifying service;

(4) To the protection of the pay drawn at the time of such appointment, if his pay in the former post is higher than the minimum of the scale in the new post, by fixing his pay at the same rate if there is a corresponding stage in the scale attached to the new post, or at the next higher stage, if there is no such corresponding stage and, for all other purposes (like review, promotion, increment, seniority, etc.,) he shall be treated as a fresh entrant and he shall be deemed to have relinquished all his rights in respect of the old post Under Rule 14 (b) (1) above.

(5) I submit that Rule 14(1)(b) of the Common Service Rule is as follows:-

Rule 14(b) (1)

(b) Notwithstanding the provisions of sub rule (a) above, (1) A permanent employee of the Corporation who possesses all the qualification and experience prescribed in these rules for direct recruitment to a category/post may, if applied for, be considered for such direct recruitment subject to his relinquished all his rights in respect of the post held by him at the time of such appointment, and he shall be allowed to deduct the period of his service upto a maximum of ten (10) years from his age for the purpose of maximum age limit."

8. The learned counsel for the respondents would draw the attention of this Court to sub-paragraph-4 of Section 37 of Common Service Rule, which would clearly state that such appointment in different Department will be treated as a fresh entrant. Therefore, the petitioner's claim cannot be sustained both in law and on facts. The learned counsel for the petitioner would however submit that the similarly placed persons were given such benefits. The learned counsel for the respondents would submit that in those cases, the persons were belonging to the same Department and therefore, the petitioner cannot draw any analogy of the same.

9. I have considered the rival submissions and having perused the pleadings and materials placed on record, this Court is in agreement with the submissions made on behalf of the respondents. Once the petitioner was re-designated as

Record Clerk in 1982, he being have come under a different Department, viz., Administrative Department and therefore, the service rendered by the petitioner while he was working as Conductor in Traffic Department cannot be taken into account for the purpose of review benefits in terms of the regulations. In any event, the benefit as request was made by the petitioner only after several years and the representation was also submitted only in 2012. Such claim is per se belated and stale and cannot be entertained by this Court. Because the petitioner managed to obtain a reply from the respondent in 2012, that it does not give any cause of action to challenge such old and stale issue. Even on merits, this Court of the considered view that the petitioner is not entitled to the claim of review benefits from the date initially appointed as Conductor in 1977. In any event, the review benefits had been granted to the petitioner from 1982 and therefore, it cannot be said that the petitioner cannot suffer any grave loss on that count.

10. For the aforesaid reasons, this Court finds no merits and substance in the writ petition and the same is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
Tamilnadu State Transport
Corporation (Salem) Ltd.,
Formerly Anna Transport Corporation Ltd.,
Salem-636 007.

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

3. The Assistant Manager,
Tamilnadu State Transport
Corporation (Salem) Ltd.,
Formerly Anna Transport Corporation Ltd.,
Salem-636 007.

+1cc to Mr.S.Rajeni Ramadoss, Advocate, S.R.No.43949

W.P.No.23998 of 2012

GP (CO)
SMI/06.08.2018