

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.15609 of 2012

V.Muthusamy

... 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 21.05.2012, 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 1.4.1981 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 21.05.2012, 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 1.4.1981 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 petitioner is as follows:-

The petitioner was initially appointed as Trainee conductor recruited through Employment Exchange in the erstwhile Anna Transport Corporation Lt.d, Salem, on 16.01.1981. He was subsequently re-designated as Record Clerk and declared to have satisfactorily completed the probation period on 28.02.1983. He was subsequently appointed as Junior Assistant in the scale of pay at Rs.620-15-875 with effect from 01.02.1989 and thereafter, he was promoted as Assistant on 01.02.1997 and was further promoted as Senior Assistant from 01.02.2007.

4.In 2010, there was a settlement between workmen and Corporation providing for review benefits. Whiling granting such benefits, his service from initial date of his appointment as Conductor, from 01.04.1981 was not taken into account, but only from the date when he was appointed as Record Clerk on 24.11.1982, has taken into account. Therefore, he made a representation to the Managing Director on 27.04.1989 and thereafter, there was no response from the respondents and it appeared that when the application was pending, he attained the age of superannuation and retired from service.

5.In 2012, another representation was submitted by the petitioner in this regard and the same was rejected on the ground that the applicant while he was working as Conductor had 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 21.05.2012, 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 01.04.1981 and not from the subsequent date, i.e. from 24.11.1982, when he was re-designated as Record Clerk. According to the learned counsel 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:

Not withstanding 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 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 however would 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 having 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 requested 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. Merely because the petitioner managed to obtain a reply from the respondent in 2012, 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 he was initially appointed as Conductor in 1981. In any event, the review benefits had been granted to the petitioner from 1982 and therefore, it cannot be said that the petitioner

has suffered 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

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To

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+1cc to M/s.S.Rajeni Ramadass, Advocate, S.R.No.43951

GP (CO)
SMI/06.08.2018

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