



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2018

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN**W.P. (MD) No.18737 of 2018**

C.Nagarathinam

.. Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai)Limited,
Bye-Pass Road,
Madurai.

2. The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,Chennai-2.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Mandamus directing the respondents to pay the Petitioner's 50% of back-wages from 28.1.2008 to 30.6.2010 (increment on the basis of 2007 settlement), arrears in pension amount from 30.7.2010 to 30.05.2018 (taken into service period as 31 years) and interest for belated payment of provident fund amount and Gratuity amount along with 18% interest per annum as per the labour Court award in I.D.No.84 of 2009, dated 09.12.2014 within the time stipulated by this Court.

For Petitioner	:	Mr.A.Mu.Sharavanan
For Respondent-1	:	Mr.A.Jeyaraman Standing Counsel
For Respondent-2	:	Mr.A.P.Muthupandian Standing Counsel

ORDER

This Writ Petition has been filed, seeking a direction to the respondents to pay 50% of back-wages from 28.1.2008 to 30.6.2010 (increment on the basis of 2007 settlement), arrears in pension amount from 30.7.2010 to 30.05.2018 (taken into service period as 31 years) and interest for belated payment of provident fund amount and Gratuity amount along with 18% interest per annum as per the labour Court award in I.D.No.84 of 2009, dated 09.12.2014 within the time stipulated by this Court.



2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. Challenging the removal from service w.e.f. 28.1.2008, the Petitioner raised an Industrial Dispute, which resulted in an award passed by the Labour Court, Trichy in I.D.No.84 of 2009, dated 9.12.2014, by which, the Labour Court, Trichy passed an award directing reinstatement of the Petitioner thereby setting aside his disengagement from service from 28.1.2008. Further, the Labour Court taking note of the fact that the petitioner had attained the age of superannuation, instead of reinstatement, granted back-wages upto 50%, apart from granting continuity of service and other attendant and consequential benefits together with retiral benefits. Aggrieved by the award, the management preferred a Writ Petition. The Petitioner has also filed a Writ Petition in W.P(MD)NO.10102 of 2015 for implementation of the award, which was withdrawn by him. The Writ Petition filed by the management is pending before this Court. In the meantime, the Petitioner taking note of his old age, had given a letter to the management to the effect that he is not entitled to any monetary and other benefits. Based on the said letter, on 29.11.2017, it has been decided by the Committee that the Petitioner is deemed to have been in service till his attainment of age of superannuation on 17.6.2010 and relieved from service on 30.6.2010. Having given the benefit of service, more particularly, the continuity of service, there is no justification on the part of the management in not paying the Provident Fund of the employer to the Provident Fund Trust. It is contended by the Petitioner that the Petitioner believing the words of the employer, had withdrawn the Writ Petition. There is no reason as to why the employee should have written such a letter. The circumstantial documentary evidence would clearly show that the Petitioner has believed the words of the management and ultimately, he was left in lurch without any benefit.

4. Even though the Petitioner has sought for a larger relief, the learned counsel for the Petitioner would submit that the period of service upto the date of 30.6.2010 may be taken into account and the Provident Fund contribution due payable by the management may be paid to the Provident Fund Trust so that the Petitioner will get the pensionary benefits. A reading of the letter appears to be that the petitioner has given up the entire benefits, but it is not so. The petitioner has not given his right of continuity of service. In order to enable the Petitioner/employee to get the pensionary benefits, certainly contribution of the employer has to be given. A plain reading of the letter would deprive the benefits due to him in terms of the employee's intention was to get the pensionary benefits, which cannot be diluted or defeated by quoting the letter written by him that he has given up all the benefits.



5.Mr.A.P.Muthupandian, learned Standing Counsel appearing for the second respondent would submit that if the employer's contribution is paid to the Pension Fund Trust, pensionary benefits for the service not rendered would be taken into account, as there is no contribution for the non-service period, as on date, in respect of the Petitioner.

6.This Court has already in an unreported decision made in ***W.P(MD)NO.13739 of 2016, in the case of J.Ramaraj .vs.The Genereal Manager, Administrative Department, TNSTC(Madurai)Limited, Virudhunagar Region, Virudhunagar and another***, held as follows:

'5.Once there is an award of reinstatement with continuity of service, the entire period of service from 1993 to 19996 will have to be taken into account, except for back-wages from the date of dismissal till the date of award. In that sense, the Petitioner has completed more than the required years of service as per the Tamil Nadu State Transport Corporation Employee's Pension Fund Rules and therefore, it is the duty cast upon the employer to remit amount in the Provident Fund Account of the Petitioner and the Petitioner is entitled to pension from the date of attaining superannuation I.e., 30.4.2016.

6.Since the management has not paid the wages from the date of award, the Management is directed to deposit the employee's contribution to the Trust together with interest within a period of two months from the date of receipt of a copy of this order, preferably on or before 28.3.2017 and on such deposit, the Petitioner shall be paid pensionary benefits with effect from 30.4.2016 forthwith. The arrears of pension from 1.5.2016 till 28.2.2017 shall be payable in 10 installments, commencing from 1.3.2017 and the pension payable from the month of March 2017, shall be paid on or before 7th of subsequent months.'

7.As the Petitioner is entitled to 50% of wages which he has given up by way of letter, whatever contribution due to the Pension Fund Trust whether be that of the employee or the employer together with interest will have to be paid by the employer to the Pension Fund Trust/Second Trust within a period of one month from the date of receipt of a copy of this order, to enable the Petitioner to get the pensionary benefits. In case of non-payment, the first respondent shall not draw monthly salary/wages from December 2018 till the directions in this order for contribution is complied with by the respondents.



8. With the above direction, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar(crl side)

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Sub Assistant Registrar(CS-IV)

To:

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai)Limited,
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Madurai.
2. The Administrator,
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Thiruvalluvar Illam,
Anna Salai,Chennai-2.

+1cc to Mr.A.Mu.Sharavanan, Advocate Sr.No.86872

VSN

VB/SKN/SAR4/15.11.2018/4P/4C

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