

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE Ms.JUSTICE P.T.ASHA

Writ Appeal No.1014 of 2018

S.Krishnamoorthy ... Appellant

-Vs-

1.M/s.Tamil Nadu State Transport Corporation
Employees Provident Fund Trust
Rep. by its Administrator
No.2, Pallavan Salai, Chennai-600 002.

2.M/s.State Express Transport Corporation Ltd.,
Rep. by its Managing Director
No.2, Pallavan Salai, Chennai-600 002. ... Respondents

Prayer:- Writ Appeal filed Under Clause 15 of Letters Patent,
against the order passed in W.P.No.2273 of 2018 dated 02.02.2018.

Prayer in W.P.No.2273 of 2018:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to recover the gratuity amount already paid to the petitioner in the cadre of Helper (Fitter) and to credit the same in the gratuity account in the present cadre and to confer the consequential benefits in the light of the Orders passed by the Division Bench of Hon'ble High Court of Madras in W.A.No.1059 of 2001 dated 27.01.2004 and in terms of Rule 36(2) and (3) of the Common Service Rule taking in to consideration of petitioners representations including the one dated 17.08.2017.

For Appellant : Mr.D.Soundarraaj

For Respondents : Mr.Kulandhaivel
for M/s.A.Anthony Arockiaraja
for R1 and R2.

J U D G M E N T

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

This intra court appeal is directed against the order dated 02.02.2018 in W.P.No.2273 of 2018 dismissing the writ petition filed by the appellant for counting the period of earlier service by surrendering the Gratuity amount and pension by computing the earlier service in the post of Helper (Fitter).

2. The appellant was initially appointed as Helper (Fitter) in the erstwhile Tiruvallur Transport Corporation. His services were regularised by order dated 26.06.1981. Subsequently, with the permission of the Corporation, he joined the services of State Transport Corporation as Junior Engineer. The appellant on attaining the age of superannuation, retired on 30.06.2016. The appellant received his Gratuity amount. However, the Provident Fund amount was retained with the employer.

3. The appellant claimed the benefits of the past service taking into account Sub Rule (2) and (3) of Rule 36 of the Common Service Rules.

4. The Writ Petition filed by the appellant was dismissed by the learned Single Judge on the ground that he received the Gratuity amount from the erstwhile employer.

5. The Writ Petition filed by the appellant deserves to be allowed for the simple reason that the resignation was only for the purpose of taking up new employment under the very same Corporation. Though the appellant joined the Thiruvallur Transport Corporation, the fact remains that the said Corporation was subsequently taken over by the State Express Transport Corporation. It was a case of merger. The earlier service would be counted for pension purpose provided the Gratuity amount was paid by the employee.

6. The issue is no longer res integra in view of the earlier orders passed by this court and compliance of the same by the Corporation.

7. We have perused the Government Order in G.O.(D).No.118, Transport (D) Department dated 07.06.2007. The Government in the said case directed the State Express Transport Corporation Limited to take action to include the services rendered by the former employee for pension in the State Express Transport Corporation and permit him to remit the Gratuity received for the services rendered, with interest. The appellant is similarly placed and the benefits should be extended to him.

8. The appellant resigned from the post and the very next day, he was appointed in the new post. The employer is one and the same. The resignation was a technical one for the purpose of taking up new assignment. The appellant would not forfeit his past service solely on account of the fact that he resigned from service and joined a new service. The employer is one and the same. The appellant is therefore eligible for the past service.

9. We direct the appellant to refund the Gratuity amount with interest at 6% per annum. The respondents are directed to receive the Gratuity with interest and thereafter count the earlier service rendered by the appellant in the post of Helper (Fitter) for the purpose of payment of other benefits including pension. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this Judgment.

10. The order passed by the learned Single Judge is set aside.

11. The intra court appeal is allowed as indicated above. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvsri
To

1. The Administrator,
M/s.Tamil Nadu State Transport Corporation
Employees Provident Fund Trust
No.2, Pallavan Salai, Chennai-600 002

2.The Managing Director,
M/s.State Express Transport Corporation Ltd.,
No.2, Pallavan Salai, Chennai-600 002.

+1cc to Mr.D.Soundar Raj, Advocate Sr 64463

W.A.No.1014 of 2018

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srg 12/09/2019