

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2019

CORAM:

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

W.A.No.1585 OF 2019

- 1 M/S.TAMILNADU STATE TRANSPORT
CORPN(CBE)LTD REP BY ITS MANAGING
DIRECTOR 37 METTUPALAYAM ROAD
COIMBATORE - 641043
- 2 THE GENERAL MANAGER
TAMIL NADU STATE TRANSPORT CORPORATION
(COIMBATORE) LTD. ERODE REGION
CHENNIMALAI ROAD ERODE Appellants
- Vs
- 1 S.CHELLAMUTHU
- 2 THE SECRETARY TO GOVT
HOME (TRANSPORT) DEPT. FORT ST. GEORGE
CHENNAI - 600009
- 3 THE SECRETARY
TAMIL NADU PUBLIC SERVICE COMMISSION FRAZER
BRIDGE ROAD VOC NAGAR PARK TOWN
CHENNAI -3
- 4 THE CONTROLLER OF EXAMINATION
TAMIL NADU PUBLIC SERVICE COMMISSION FRAZER
BRIDGE ROAD VOC NAGAR PARK TOWN
CHENNAI-3
- 5 THE TRANSPORT COMMISSIONER
CHEPAUK CHENNAI -5 Respondents

Appeal filed to set aside the order dated 27-09-2018 made in
WP.12524/2014.

W.P.No.12524/2014:

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents 2 & 3 to call the petitioner for interview for the post of Motor Vehicle Inspector Gr.II based on the notification issued by the Tamilnadu Public Service Commission

dated 24.2.2009 and 28.2.2009 in view of the fact that the petitioner has secured necessary cut off mark calling for an interview which was held on 07.10.2010 and 08.10.2010 and further direct the respondent to select and appoint the petitioner and Motor Vehicle Inspector , Gr-II and alternatively, direct the respondents and to reinstate the petitioner into service in the post of selection Grade Senior Assistant Engineer with due seniority and grant him all consequential service and monetary benefits.

For appellant : Mr.Saiprasad

For Respondents : Mr.K.Venkatramani, Senior Counsel,
for Mr.Muthappan,
for the first respondent
Mrs.A.Srijeyanthi, Spl.G.P.,
for respondents 2 and 5

Mr.N.Devendran,
for respondents 3 and 4

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

Introductory:-

This is the unfortunate case of a former employee of the Tamil Nadu State Transport Corporation who resigned from the post of Selection Grade Senior Assistant Engineer for taking up the appointment as Motor Vehicle Inspector Grade II, in the Tamil Nadu Transport Subordinate Service and whose appointment was subsequently cancelled by a Division Bench of this Court at the instance of an unsuccessful candidate. The claim made by the first respondent at least to pay him pension, taking into account his 26 years of continuous service in the Tamil Nadu State Transport Corporation was not favourably considered, resulting in filing a Writ Petition. The writ court directed the appellants to treat the resignation of the first respondent as one of voluntary retirement and pay him all the retirement and pensionary benefits. The Tamil Nadu State Transport Corporation has come up with this appeal with a primary contention that the first respondent has ceased to be its employee the moment his resignation was accepted on 31 October 2009.

Brief facts:-

2. The first respondent who is a Diploma Holder in Mechanical Engineering was initially appointed as Junior Engineer in the Tamil Nadu State Transport Corporation on 28 July 1983. He was subsequently promoted as Assistant Engineer and thereafter, as Selection Grade Senior Assistant Engineer. While functioning as such, he submitted an application for

appointment to the post of Motor Vehicle Inspector Grade II, in the Tamil Nadu State Transport Subordinate Service, pursuant to the notification dated 18 April 2007. He was selected and appointed as Motor Vehicle Inspector Grade II by order dated 2 November 2009. It is seen from the records that one unsuccessful candidate challenged the selection on the ground that his preferential qualification was not considered by the Selection Committee. The Writ Petition was dismissed by the learned Single Judge. The intra court appeal filed against the said order was allowed by the Division Bench by judgment dated 12 June 2012 in W.A.No.2175 of 2011. The said order was unsuccessfully challenged before the Hon'ble Supreme Court in S.L.P.(C) No.22185 of 2012.

3. The first respondent was removed from service by order dated 28 June 2013, pursuant to the Judgment in W.A.No.2175 of 2011. The appellant thereafter filed a Writ Petition to direct the Tamil Nadu Public Service Commission to call him for interview, pursuant to the application submitted by him for the next selection. There was an alternative prayer to the appellants herein to reinstate the first respondent into service in the post of Selection Grade Senior Assistant Engineer with due seniority.

4. The learned single Judge by order dated 27 September 2018 directed the appellants to treat the resignation submitted by the first respondent as one of voluntary retirement and pay him all consequential benefits. It is the said order which is imugned in this intra court appeal by the Tamil Nadu State Transport Corporation, primarily on the ground that there was no employer employee relationship after the submission of resignation by the first respondent on 30 October 2009 and acceptance of the same by the management on 31 October 2009.

5. We have heard the learned Standing Counsel for the Tamil Nadu State Transport Corporation. We have also heard the learned Senior counsel for the first respondent.

Discussion:-

6. There is no dispute that the first respondent was initially appointed in the Tamil Nadu State Transport Corporation on 28 July 1983. The first respondent was given multiple promotions taking into account his qualification. The first respondent submitted application for appointment to the post of Motor Vehicle Inspector Grade II, pursuant to the notification issued by the TNPSC. The application was routed through the Tamil Nadu State Transport Corporation. The TNPSC vide Memorandum No.3180 dated 8 September 2009, informed the first respondent that he was selected provisionally for the post of Motor Vehicle Inspector Grade II, subject to the final

outcome of certain Writ Petitions pending before the High Court. The first respondent on receipt of the order of appointment, submitted resignation from the post of Selection Grade Senior Assistant Engineer on 30 October 2009. The resignation was accepted by the management on 31 October 2009.

7. The appointment of the first respondent was challenged before the writ court by a non selected candidate. The challenge was not against the first respondent on the ground that he was ineligible. The challenge was primarily on the ground that the qualification possessed by the said candidate was not considered by TNPSC. The contention was finally upheld by the Division Bench. The first respondent therefore, lost his employment.

8. The subsequent events relating to the loss of employment alone made the first respondent to file the Writ Petition. The first respondent claimed that he should be permitted to join in the post he was holding as on the date on which the resignation letter was submitted viz., 30 October 2009.

9. The appellants have taken up a contention that on account of the acceptance of resignation, it would not be possible for the first respondent to join service or claim retirement benefits.

10. There is absolutely no dispute that the first respondent was in the service of the Tamil Nadu State Transport Corporation for a continuous period of 26 years as on the date on which resignation letter was submitted by him. It is also the admitted case of the parties that the application for appointment to the post was made only through the employer.

11. The Tamil Nadu State Transport Corporation Employees Pension Fund is a consolidated code containing the regulations with regard to payment of pension to the Transport employees. Regulation 16(e) of the Tamil Nadu Transport Corporation Pension Fund provides that resignation from service or post entails forfeiture of past service. However, the proviso to the said provision clearly gives an indication that the resignation shall not entail forfeiture of the past service if it has been submitted to take up with proper permission, another appointment under the Government Department/ State Public Sector Undertaking/Board. The Statute further provides that pensionary benefits in such cases shall be transferred to the new employer's pension fund/EP Scheme and such benefits shall not be directly paid to the individual.

12. The Pension Fund Regulations therefore clearly provide that in the event of resignation of an employee, the pensionary benefits would be transferred to the pension fund account opened by the new employer.

13. It is not in dispute that the first respondent submitted application for appointment as Motor Vehicle Inspector through the Tamil Nadu State Transport Corporation. Similarly, there is no dispute that the letter of resignation was submitted only on account of the appointment order issued by the Tamil Nadu Public Service Commission, selecting and appointing the first respondent as Motor Vehicle Inspector Grade II.

14. The core question is as to whether the proviso to the regulation 16(e) would come to the rescue of the employee in case the subsequent appointment was cancelled on account of the reasons beyond his control, resulting in loss of employment.

15. The learned Single Judge directed the appellants to consider the resignation as one of voluntary retirement and to grant him all the benefits. We are not in a position to agree with the views expressed by the learned Single Judge in its entirety. There is no question of converting the letter of resignation into one of voluntary retirement. The resignation was a conscious act on the part of the first respondent taking into account his appointment as Motor Vehicle Inspector Grade II. There is no question of converting the resignation simplicitor into one of voluntary retirement, on the facts and circumstances of the case. We therefore set aside the direction given by the learned Single Judge with respect to the conversion of resignation as one of voluntary retirement.

16. The other question is as to whether the first respondent is eligible for pension under the Tamil Nadu Transport Employees Pension Rules. The first respondent was having the required service, making him eligible for pension. He was in the service for a period of 26 years. The first respondent is therefore eligible for pension but for his resignation. The resignation was only for the purpose of taking up employment under another Government Department. The application for appointment was routed through the Tamil Nadu State Transport Corporation. The resignation was also for the purpose of taking up appointment as Motor Vehicle Inspector under the Tamil Nadu Motor Vehicle Service. The pensionary benefits would have been transferred to the account of the new employer but for the judgment in W.A.No.2175 of 2011 setting aside the appointment of the first respondent. Since the appointment was set aside at the instance of another candidate only on the ground that his preferential qualification was not considered, the first respondent would be

entitled to the benefits of the Tamil Nadu State Transport Corporation Employees Pension Fund. The pensionary benefits transferred to the new employees pension fund in such cases would revert back to the Tamil Nadu State Transport Corporation Ltd. We are therefore of the view that the learned Singe Judge was correct in directing the appellants to pay pensionary benefits to the first respondent.

17. The order passed by the learned Single Judge with respect to the direction to treat the resignation as one of voluntary retirement and payment of retirement benefits is set aside. The direction for payment of pensionary benefits is sustained.

18. We direct the appellants to calculate the pension payable to the first respondent taking into account his service for the period from 28 July 1983 to 31 October 2009 and pay him the pensionary benefits. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

19. The intra court appeal is allowed to the limited extent indicated above. No costs.

s/d-
Assistant Registrar (CS-III)

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Sub-Assistant Registrar

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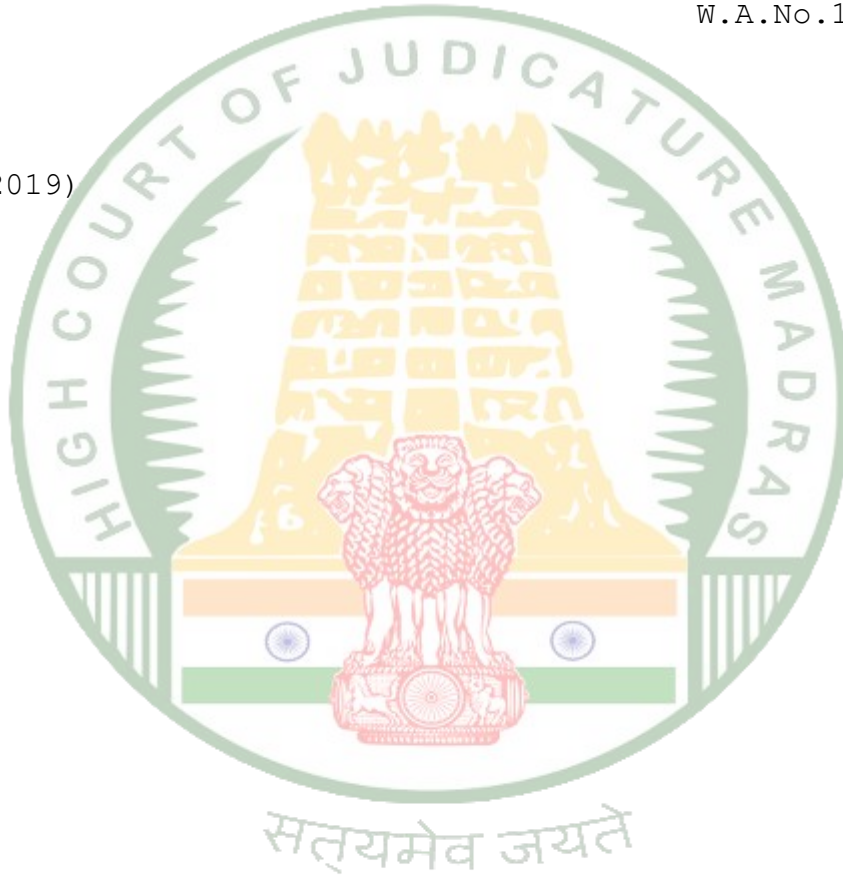
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+1 CC to Mr.M.Devendran, Advocate sr 49362.
+1 CC to M/s. Sai Prasad Advocate sr 49761.
+1 CC to Govt. Pleader sr 50120.

W.A.No.1585 OF 2019

JP (CO)
SP (26/07/2019)



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