



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2019

CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.28554 of 2014

R.C.Radhakrishnan

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Represented by the Chairman &
Principal Secretary to Government,
Transport Department,
Secretariat,
Chennai-600 009.

2. The TNSTC Employees Pension Fund Trust,
Represented by its Administrator,
SETC Compound, Pallavan Salai,
Chennai-600 002.

3. The Tamil Nadu State Transport Corporation
(Salem) Limited,
Represented by its Assistant Managing Director,
No.12, Ramakrishna Road,
Salem-636 007.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for all the connected and relevant records relating to the Letter No.90042/PN2/TNSTC/SALEM/2014 dated 27.03.2014 issued by the third respondent and quash the same and direct the 3rd Respondent to refix the petitioner's pay in the original cadre of the post of driver following the orders issued by this Court in W.P.Nos.31849 and 31850 of 2007 dated 28.10.2008 and to settle petitioner's arrears of pay and allowances and retirement benefits accordingly.

For Petitioner

: Mr.D.Sadhasivan

For Respondents

: Mrs.S.Rajeni Rama Doss



O R D E R

The petitioner has joined as a driver in Tamil Nadu State Transport Corporation (Salem) Ltd. He was medically discharged from duty on 18.01.1990 and the respondent-Corporation provided alternative employment to the petitioner as Junior Tradesman and he joined duty in the post of Junior Tradesman on 18.01.1991 and superannuated on 30.04.2001 from Tirupattur Region.

2. Based on the illustration of pension calculation, the Tamil Nadu State Transport Corporation (Salem) Ltd., the 3rd respondent herein has fixed the petitioner's pension as Rs.676/- with effect from 01.05.2001 by its letter dated 09.11.2010.

3. The petitioner has challenged the aforesaid letter in W.P.No.30363 of 2013 and this Court, by order dated 11.11.2013 directed the respondents to consider the representation of the petitioner and pass orders. The relevant portion of the order is extracted hereunder:-

'3. Though the prayer sought is for issuance of a Writ of Certiorari considering the facts and circumstances of case, this court moulds the prayer and directs the 2nd and 3rd respondents to consider and pass appropriate orders on the representation of the petitioner dated 22.12.2012, on merits and as per law, within a period of 12 weeks from the date of receipt of a copy of this order. This writ petition is disposed of accordingly. No costs. Connected M.P. is closed.'

4. Pursuant to the said order, the 3rd respondent by its letter No.90042/PN2/TNSTC/SALEM/2014 dated 27.03.2014, passed the impugned order rejecting the claim of the petitioner. Challenging the said order, the petitioner has filed the present writ petition before this Court.

5. According to the learned counsel for the petitioner, the aforesaid order rejecting the claim of the petitioner is totally illegal and contrary to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and also the petitioner was originally appointed as driver in the Transport Corporation and due to his personal disablement, the 3rd respondent has provided him alternative employment as Junior Tradesman. The said post is in the scale of pay lesser than the scale of pay received earlier by the petitioner as driver of the Transport Corporation. The above said Act came into force in the year 1995. Subsequently, the petitioner made a representation before the transport Corporation to consider his request and to pay the scale of pay



on par with the drivers of the transport Corporation and also to revise the pension to the petitioner. The said request of the petitioner was rejected.

6. The learned counsel for the respondent-Corporation would submit that the petitioner's request for alternative employment was considered by the transport Corporation and also provided employment as Junior Tradesman in the Transport Corporation and the petitioner also not raised any objection before the Authority and accepted the order and joined duty. The petitioner retired from his service on superannuation in the year 2001. Thereafter, 10 years after retirement, he made a representation to the respondents on 22.12.2012.

7. The learned counsel for the petitioner has relied upon the decision of this Court in the case of E.Murugan Vs. The General Manager (Operation) Metropolitan Transport Corporation Ltd., reported in MANU/TN/2124/2011, wherein this Court held as under:-

'3. The learned counsel for the petitioner submitted that alternate employment shall be given to the employees who sustained disability even though the disability has occurred prior to Act 1 of 1996 and the said issue was considered by me in the decision reported in (2008) 8 MLJ 1079, (R.Mani v. Labour Court, Trichy and Another) which was also confirmed in W.A.No.482 of 2009, by order dated 18.03.2010. The learned Counsel for the petitioner further submitted that in W.P.No.19928 of 2005, by order dated 24.03.2008 I had ordered alternate employment with salary protection and other benefits to the similarly placed person. The said order was also confirmed by the First Bench of this Court in W.A.No.2073 of 2010 by order dated 25.10.2010.'

8. The learned counsel for the petitioner has relied upon the decision of this Court in the case of Chinnusamy and other Vs. The Tamil Nadu State Transport Corporation (Salem Division I) represented by its General Manager (Operation), wherein paragraph No.4 reads as follows:-

'4. The respondent is directed to give alternative employment to the petitioners in any of the posts in which they are eligible to be fit in within a period of two weeks. The petitioners are also entitled to get all promotional and other benefits pursuant to the cancellation of the orders dated 01.12.1995 and 4.12.1995. It is made clear that except the claim of backwages from 01.12.1995 and 4.12.1995 respectively till date all other rights are to be given to the petitioners. This



order is passed taking note of the employment given to the petitioners as Helpers as new entries from 17.12.1996.''

9. The learned counsel for the petitioner has also relied upon the decision of Apex Court in the case of Union of India (UOI) and Ors., Vs. Tarsem Singh reported in MANU/SC/7976/2008, wherein, in paragraph Nos.5 and 6, it is held as under:-

'5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.''



10. According to the learned counsel for the petitioner, he has restricted his claim to the revised pension on par with the driver of the Transport Corporation from the date of the representation made to the Transport Corporation. To that extent, the aforesaid relief is sought for by the petitioner.

11. The learned counsel for the 3rd respondent/Transport Corporation submitted that as per the judgment of the Apex Court relied upon by the petitioner cited above, the petitioner is not entitled to the arrears for the entire period and he is only entitled for the period of three years before filing the writ petition or from the date of demand to the Department whichever is less and he is also not eligible for any interest for the aforesaid period. Therefore, the petitioner cannot have the right to claim any revised pension from the date of retirement on par with the scale of pay received by the driver of the Transport Corporation at the time of retirement.

12. It is relevant to extract Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, as follows:-

'47. Non-discrimination in Government employment.- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

In Narendra Kumar Chandla vs. State of Haryana, [(1994) 4 SCC 460], the Hon'ble Supreme Court held as under:-

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

13. The 3rd respondent/Transport Corporation has provided alternative employment to the petitioner as Junior Tradesman and the post is lower than the driver of the Corporation and the scale of pay also lesser than the scale of pay of the driver of



the Transport Corporation. But, the petitioner has not raised any objection and joined duty in the post of Junior Tradesman. Whiles, on 22.12.2012 the petitioner has made a representation to the 3rd respondent, after retiring from the service for payment of revised pension on par with Driver.

14. As per Section 47 of the said Act, the petitioner's rank shall not be reduced. Considering the facts of the case, the petitioner joined in the lower cadre prior to the Act, coming into force. In so far as the pension is concerned, there is no time limit for getting the revised scale of pay and in view of the judgment of this Court cited supra, the petitioner is entitled to draw the revised pension on par with the scale of pay of the drivers of the Transport Corporation. Therefore, the impugned order passed by the Respondent-Corporation is liable to be quashed to the aforesaid extent.

15. It is brought to the notice of this Court by the learned Standing Counsel appearing for the Respondent-Corporation that the Rights of Persons with Disabilities Act, 2016 came into force with effect from 19.04.2017, wherein, the corresponding Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, makes it clear that the petitioner is entitled only for the revised pension from the date of representation dated 22.12.2012. Therefore, the Respondent-Corporation shall consider the representation of the petitioner, dated 22.12.2012 afresh and pass appropriate orders on merits for fixing the revised pension to the petitioner on par with the drivers scale of pay of the Transport Corporation, with effect from the date of representation of the petitioner.

16. In the facts and circumstances of the case and in the light of the judgments cited supra, the impugned order passed by the 3rd respondent, dated 27.03.2014, is quashed and consequently, writ petition is allowed. The Respondent-Corporation is directed to consider the petitioner's pensionary benefits as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



ssn

To

WEB COPY

1. The Government of Tamil Nadu,
Represented by the Chairman &
Principal Secretary to Government,
Transport Department,
Secretariat,
Chennai-600 009.

2. The TNSTC Employees Pension Fund Trust,
Represented by its Administrator,
SETC Compound, Pallavan Salai,
Chennai-600 002.

3. The Tamil Nadu State Transport Corporation
(Salem) Limited,
Represented by its Assistant Managing Director,
No.12, Ramakrishna Road,
Salem-636 007.

+1cc to the Government Pleader sr.38867

+1cc to Mr.D.Sadhasivan, Advocate, S.R.No. 38013(05/08/2019)

W.P.No.28554 of 2014

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