IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.3406 of 2017
and
W.M.P. No.3392 of 2017

M.Palani Vadivelu ...Petitioner

Vs

1.Tamil Nadu State Transport Corporation,
Kumbakonam (Division IV) Ltd.,
Kumbakonam rep. by its
Managing Director.

2.The General Manager,
Tamil Nadu State Transport Corporation,
Kumbakonam (Division IV) Ltd.,
Pudukottai.

3.The Administrator,
TNSTC Employees Pension Fund Trust, Administrative Office,
Thiruvalluvar House,
Pallavan Salai, Chennai - 2. ...Respondents

(R3 suo motu impleaded vide
order dated 11.12.2018 made in
W.P.No.3406 of 2017)

PRAYER:- Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus directing the first respondent to refix the basic salary of the petitioner at the rate of Rs.15,700/- on par with his immediate juniors and accordingly pay the arrears of back wages for the period between 04.05.2000 and 14.04.2013 and the arrears of salary for the period of 15.04.2013 to 31.05.2016 and pay all the retirement benefits including monthly pension, gratuity, provident fund, social security amount etc., considering the length of service of the petitioner is 27 years along with an interest at the rate of 18% from 01.06.2016.

For Petitioner : Mr.R.Sivakumar

For Respondents : Mr.D.Venkatachalam
for R1 to R3

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This case has got a chequered history with the first writ petition having been filed in the year 2001. Therefore, we are constrained to place the facts for proper appreciation.

2.The petitioner was appointed as Conductor on 15.05.1989. He was also made as a member of Provident Fund and deduction was accordingly made from the year 1989. He met with an accident in the year 1998. On 10.03.2000, the Medical Board recommended for alternative employment. However, he was discharged by the respondent Corporation on medical grounds on 04.05.2000.

3.The petitioner preferred an appeal before the first respondent and he was appointed as a Helper afresh. The said decision being contrary to The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred to as 'the Act'), a writ petition was filed in W.P.No.2570 of 2001. During the pendency of the writ petition, the petitioner was dismissed from service. Hence the petitioner filed two writ petitions in W.P.Nos.2570 of 2001 and 3426 of 2002. On 29.06.2009, a common order was passed by the learned single Judge with the following directions:

> "8.In view of the said affidavit filed foregoing 50% backwages payable to the petitioner, the impugned orders are set aside with a direction to the respondents to reinstate the petitioner by providing alternative employment as per the qualification of the petitioner within a period of two weeks from the date of receipt of a copy of this order. The petitioner is entitled to get 50% of the backwages from the date of dismissal till the date of reinstatement which is now ordered as above. It is also made clear that the petitioner is entitled to get all other service benefits, namely, seniority, increments and

promotional opportunities, if any. The respondents are directed to implement this order within a period of two weeks from the date of receipt of a copy of this order."

4.Aggrieved over the same, writ appeals were filed in W.A.Nos.1322 and 1323 of 2010. These writ appeals were disposed of in the following manner:

> "3.The alternate employment as contemplated under Section 47 of the Persons with Disabilities Act would include alternate suitable employment. Considering the nature of disability and the subsequent order of dismissal, this court, finding no merit in the appeal filed by the appellant, direct the respondent to join the post of cleaner. We are not inclined to go into the factual aspect in question except directing that the respondent would be entitled for reinstatement with 50% of backwages from the date of dismissal till the date of reinstatement which would be calculated on the basis of his last drawn wages. The entire period would be counted for other service benefits.
>
> 4.Mr.Rakhunathan, learned counsel appearing for the respondent would further submit that the respondent may be given opportunity to approach the appellant corporation with a request for suitable alternate employment, in view of his disability, though he is prepared to join at present to the post of cleaner. In view of the said submission, we only give liberty to the respondent to make appropriate representation to the appellant seeking for suitable alternate employment and if such representation is made the appellant corporation shall consider the same in the light of the disability pointed out by the medical board.
>
> 5.The writ appeals are disposed of accordingly. However, there will be no order as to costs. The connected miscellaneous petitions are closed."

5.Thus, it was held that the alternative employment as mandated under the Act would include suitable employment and the entire period would be counted for other service benefits.

6.As the aforesaid order passed was not complied with, the contempt petition was filed. Before the Division Bench, the respondents produced the order dated 28.03.2013 posting the petitioner as Time Keeper. They also undertook that appropriate pay protection and service benefits would be provided as per

Section 47 of the Act. Recording the same, the contempt petition filed in Contempt Petition No.1207 of 2012 was closed. Further contempt petition was filed by the petitioner in Contempt Petition No.1384 of 2013 interalia alleging that the undertaking given was not complied with with respect to pay fixation. It is to be noted that notwithstanding the earlier order produced, the petitioner was only posted as Helper as against Time Keeper. Pursuant to the direction of this Court, the petitioner was once again posted as Time Keeper. It is to be noted that on 07.06.2013, the petitioner was reinstated. Thereafter, he sought for voluntary retirement. The contempt petition was closed since the petitioner was reinstated as Time Keeper with liberty to challenge the fixation of pay in separate proceedings.

7.Request of the petitioner seeking voluntary retirement was rejected after nearly one year on the ground that he did not have any sufficient service to seek the voluntary retirement. Once again, the petitioner filed another contempt petition in Contempt Petition No.3365 of 2014, which was accordingly disposed of, directing the respondents to furnish the details of calculation of the petitioner's service period. In the meanwhile, on attaining the age of superannuation, the petitioner was allowed to retire. The first respondent issued service appreciation certificate stating that the petitioner has completed 20 years of satisfactory service. However, no pension was sanctioned to him along with gratuity and provident fund amount.

8.On a query raised by the petitioner under the Right to Information Act, he has been informed that inasmuch as certain clarification has been sought for, the proposal has been kept pending. Thereafter, the second respondent informed the petitioner that he is not eligible for pension since he has not completed 10 years of service, though no separate order has been passed, denying the entitlement. Under those circumstances, the petitioner filed the present writ petition. During the pendency of the writ petition, provident fund amount alone was settled. Thereafter, service gratuity was also paid.

9.Learned counsel appearing for the petitioner submitted that it is a clear case of malice in fact and law. There is a total misconception of the orders passed and the order of dismissal was set aside. There is deduction towards provident fund from the amount payable to the petitioner. In fact, only after such deduction, the remaining amount was paid. There is no connection between the payment of 50% of salary towards backwages, out of which, the contribution was deducted and counting the said period as a regular employment. The stand taken is an attempt to review the orders passed by this Court. Therefore, the writ petition will have to be allowed. To buttress his submissions, reliance has been made on the following decisions:

(i)Bhagwan Dass and Another Vs. Punjab State Electricity Board ((2008) 1 SCC 579)

(ii)K.Vijayakumar Vs. T.N.State Transport Corporation (Villupuram Divn.) Ltd., (2014-II-LLJ-465 (Mad))

(iii)M.Samuel Sekar Vs. Tamil Nadu State Transport Corporation (2014-IV-LLJ 591 (Mad))

(iv)Management of Tamil Nadu Vs. K.Sundar (2016-I-LLJ 521 (Mad))

10.Learned counsel appearing for the respondents would submit that the decision was made based upon the relevant Rule. The petitioner was earlier dismissed from service and only 50% of backwages were paid during non-employment. For the non-contributory period during service the same shall be counted for arriving the actual service. Therefore, the writ petition will have to be dismissed.

11.The respondents totally misdirected themselves while considering the case of the petitioner. The order of dismissal was set aside and payment of 50% of the backwages has got nothing to do with the counting of services rendered. Similarly, the contribution, if any, will have to be deducted from the amount otherwise payable to the petitioner. It appears that some of the deductions have already been made. Reliance made upon Rule 13 C of TNSTC EPF Rules cannot be applied to the facts of the case. The said Rule can be applied for a normal case. We are dealing with the case involving application of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the interpretation of the orders passed by this Court. The entire scenario has been brought forth by the wrong action taken by the respondents for which the petitioner cannot be penalised. When once the order of dismissal is set aside, the consequence will have to follow. In fact, this Court has specifically stated that continuity of service will have to be kept in mind. The respondents are clearly trying to circumvent the orders passed by this Court. In this connection, we may usefully refer to the following paragraphs of the judgments :



(i)In Bhagwan Dass and Another Vs. Punjab State Electricity Board ((2008) 1 SCC 579), it has been held as under:

> 19.We understand that the officers concerned were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle.

From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country.

(ii)In K.Vijayakumar Vs. T.N.State Transport Corporation (Villupuram Divn.) Ltd., (2014-II-LLJ-465 (Mad)), it has been held as under:

24. Disabilities Act is a beneficial legislation and the Courts, while interpreting such legislation, has to prefer that construction which helps to carry out the benevolent purpose of the Act and does not unduly extend the area or the scope of exception. The decisions of the Hon'ble Supreme Court of India as well as the decisions rendered by this Court as cited above, would clearly indicate that Courts cannot shut its eyes if a person knocks at its door claiming relief under the Act and in a welfare State like India, benefits of benevolent legislation cannot be denied on the ground of mere hyper-technicalities and when the law maker conferred certain privileges on a class of persons, like a disabled person, duty is cast upon the judiciary to oversee that the authorities or the persons to whom such a power is conferred, enforce the same in letter and spirit for which such an enactment has been made.

(iii)In M.Samuel Sekar Vs. Tamil Nadu State Transport Corporation (2014-IV-LLJ 591 (Mad)), it is held as follows:

9. In view of the above findings, the order of the learned Single Judge dated 29.01.2013 made in W.P.No.9546 of 2012 is set aside. The respondents are directed to treat the appellant as served in the driver post from the date of discharge with all other promotion benefits. However, the difference in pay payable between 16.10.1998 and 31.03.2012 need not be paid to the appellant in terms of the additional affidavit filed by the appellant before the learned Single Judge. But, the said period shall be included for other purposes. Since the appellant has already retired from service on 30.04.2013, he is entitled to

get the difference in pay from 01.04.2012, as if, he served in the post of driver from the date of discharge. The arrears of pay payable from 01.04.2012 till the date of retirement shall be calculated and the said amount shall be adjusted towards the contribution payable by the appellant for the purpose of sanction of terminal benefits. If any further amount is payable by the appellant, the same shall be paid by the appellant without any interest to the Corporation for the calculation of retirement benefits. The said exercise is directed to be completed by the respondents within a period of three months from the date of receipt of a copy of this order.

(iv)In Management of Tamil Nadu Vs. K.Sundar (2016-I-LLJ 521 (Mad)), it has been held as under:

5.It is found by the Labour Court as well as the learned single Judge that there was no negligence on the part of the first respondent/workman. When such is the position, the non-employment of the first respondent/workman cannot be employed against the first respondent/workman and therefore the submission made by the learned counsel for the appellant in this regard is not acceptable. With regard to non-payment of contribution towards pension fund during the period of non-employment, the first respondent/workman was not paid salary and therefore there could be no deduction towards contribution to pension fund. In any case, the amount of contribution towards pension fund that the first respondent/workman would have paid during the non-employment period can be recovered from the amount payable to the first respondent/workman or adjusted from his present salary.

12.From the above said judgments, there is no doubt in our mind that the intention of the enactment will have to be given effect to and even in the case of non-payment of contribution, deduction will have to be made from the amount payable by the employee after giving credit to the interest component.

13.In such view of the matter, the writ petition stands allowed. Consequently, the respondents are directed to pay retiral benefits including pension to the petitioner by treating the petitioner as in service and in tune with the similarly placed employees. The services rendered by the petitioner for 27 years 15 days will have to be reckoned for the aforesaid purpose. The amount, if any, due from the petitioner and if paid, based upon the decision taken already can very well be adjusted by the respondents. Appropriate orders will have to be passed within a period of eight weeks from the date of receipt of a copy of this order. We hope and trust that respondents would comply with the aforesaid order instead of driving the petitioner to file one more contempt petition. No costs. Consequently, connected miscellaneous petition is closed.

mmi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
   Tamil Nadu State Transport
   Corporation,
   Kumbakonam (Division IV) Ltd.,
   Kumbakonam.

2. The General Manager,
   Tamil Nadu State Transport
   Corporation,
   Kumbakonam (Division IV) Ltd.,
   Pudukottai.

3. The Administrator,
   TNSTC Employees Pension Fund
   Trust, Administrative Office,
   Thiruvalluvar House,
   Pallavan Salai, Chennai - 2.

+1cc to Mr.R.Sivakumar, Advocate, S.R.No.5121
+2cc to Mr.D.Venkatachalam, Advocate, S.R.No.5162



W.P.No.3406 of 2017

ssv(co)
kak(28/02/2019)