

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 25105 OF 2018

B.Munusamy

... Petitioner

- Vs -

1. The Managing Director  
Tamil Nadu State Transport  
Corporation (Salem) Ltd.  
Dharmapuri Region  
Ramakrishna Road, Salem - 7.

2. The Administrator  
Tamil Nadu State Transport  
Corporation Employees Pension Fund  
Pallavan Salai, Chennai 600 002. ... Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus to direct the respondents to revise the petitioner's pension taking note of the entire service of the petitioner and correct wage payable to him.

For Petitioner : Mr. S.T.Varadarajulu

For Respondents: Mr. Rajeni Ramdoss

ORDER

The present petition has been filed by the petitioner for a direction to the respondents to revise the pension payable to the petitioner by counting the entire period of service and by fixing proper wage to the petitioner.

2. The petitioner joined the service of the respondent Corporation on 12.5.86 as Driver. His services were regularised in the year 1987. On 5.2.1995, while the petitioner was driving the bus from Bangalore to Krishnagiri, it met with an accident, which led to the death of the cleaner of the other vehicle and also a passenger of the bus. A departmental enquiry was initiated after chargesheeting the petitioner and ultimately the petitioner was dismissed from service on 22.11.95.

3. As against the order of dismissal from service, the petitioner raised an industrial dispute, which was numbered as ID No.16/96. After adverting to the various materials and evidence, the Labour Court, by award dated 29.12.97, set aside the order of dismissal of the petitioner and directed the respondent Corporation to reinstate the petitioner in service with backwages and continuity of service and all other attendant benefits. Challenging the said award, the respondent Corporation filed W.P. No.9257/98 and this Court, by order dated 30.4.08 confirmed the award of the Labour Court in regard to reinstatement, however, modified the payment of backwages alone. This Court, vide its order, held that the petitioner was entitled to a portion of the backwages alone and not the entire backwages for the period of non-employment. Ultimately, the petitioner was reinstated in service on 29.11.08.

4. According to the learned counsel for the petitioner, after his reinstatement, his pay was not properly fixed on par with his juniors and, therefore, he had submitted his representation against wrong fixation of pay. Since no action was taken to properly fix his pay even after the representation, the petitioner was constrained to approach this Court by filing W.P. No.15464/09 seeking direction to the respondent Corporation to fix his wages correctly. This Court disposed of the writ petition on 30.9.11 by giving direction to the respondent Corporation.

5. After serving the Corporation for about 30 years, the petitioner attained the age of superannuation and retired from service on 31.1.16. On his retirement, pension was sanctioned from September, 2016. However, in the pension order, it was shown that the pensionable service was only 14 years instead of counting the entire period of service put in by the petitioner from the date of his regularisation in the year 1987 till the date of his retirement on 31.1.16. In this regard, the petitioner submitted representation and since the same did not evoke any response from the respondent Corporation, the petitioner has approached this Court seeking the relief as stated supra.

6. In response to the notice issued in the writ petition, on behalf of the respondents, Ms.Rajeni Ramdoss entered appearance and filed a detailed counter. In the counter affidavit it is stated that since this Court, in its earlier order dated 30.4.08, has modified payment of full backwages to the petitioner and has granted only a portion of the backwages, the period of non-contributory service of the petitioner during the period of non-employment was not counted for the purpose of pensionable service. According to Ms.Rajeni Ramdoss, learned

counsel for the respondents, as per pension regulations governing the respondent Corporation, the non-contributory period of service shall not be counted in terms of Part-VI of the Pension Regulations, wherein Regulation 13 deals with Determination of Eligible Service'. For reference, the same is extracted hereunder :-

"13. DETERMINATION OF ELIGIBLE SERVICE

The eligible service shall be determined as follows :

a) In the case of a "New Entrant" entering into service on or after 1.9.1998, the "actual service" shall be treated as eligible service. The total actual service shall be rounded off to the nearest year. The fraction of service for six months or more shall be treated as one year and the service less than six months shall be ignored.

b) In the case of the "existing member" as on 1.9.1998, the aggregate of actual service as indicated para 2 (p) shall be treated as eligible service.

c) If there is any non-contributory period during the service, it shall not be counted for arriving the actual service."

7. Ms.Rajeni Ramdoss, learned counsel for the respondents further contended that the petitioner's pay has been properly fixed during the period of his employment and he cannot seek fixation of pay compared with his junior in view of several punishments imposed on him as enumerated in the counter affidavit filed on behalf of the respondent Corporation. In any event, it is submitted, that in view of non-contribution during the period of non-employment, in the absence of grant of full backwages for the entire period of non-employment, the petitioner is not entitled to have the service counted for the purpose of pension. Therefore, it is submitted that non-contributory period has been excluded towards pensionable service and the remaining period of service has been counted and pension has been calculated and paid to the petitioner. It is therefore contended that the writ petition is without merits.

8. It is the further contention of the learned counsel for the respondents that this Court has passed the order in the writ petition as early as on 30.4.08 and in the subsequent writ petition order was passed on 30.9.11 and, therefore, the present writ petition filed in the year 2018 is severely hit by laches and no explanation has been spelt out in the affidavit filed by the petitioner and, therefore, on this ground alone, the writ petition is liable to be dismissed.

9. The learned counsel for the writ petitioner submits that as per clause 17 of the pension regulations, it is incumbent on the Corporation to advise the member of the non-contributory service and informing that such non-contributory service shall not be counted for the purpose of arriving at the pensionable service. Particular reference was drawn to sub-clause (e) of Clause 10 in Part-IV of the pension regulation, which is quoted hereunder for reference:-

"10. ....

(e) If for a member there is a non-contributory service, the STUs shall keep a record of such non-contributory service and shall advise the member of the non-contributory service from time to time that such non-contributory service shall not be counted for arriving the pensionable service."

10. Learned counsel for the petitioner submitted that the petitioner was never informed of the non-contributory service and about the non-contributory service not being counted for pensionable service as per the pension regulations. Therefore, it is submitted that the Corporation may be directed to deduct the contribution towards the pension fund from the arrears payable to the petitioner on counting the entire period of his employment during the non-employment period when the petitioner was dismissed from service till he was reinstated by the orders of this Court.

11. This Court considered the contentions advanced by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the pleadings and materials available on record.

12. Although pension regulations stipulate that non-contributory period shall not be counted towards pensionable service, in this case, the petitioner is placed in a peculiar situation in which his services were originally terminated by dismissing him from service on 22.11.1995. The dismissal from service was the subject matter of I.D. No.161/96 and the Labour Court has ultimately passed an award on 29.12.97 by setting aside the order of dismissal from service and ordered reinstatement with full backwages along with continuity of service and all other attendant benefits. Once the Labour Court has ordered reinstatement of the petitioner, he is deemed to have continued in service for all purposes and the period of non-employment cannot be construed as one of non-contributory period for the purpose of actual pensionable service.

13. Even assuming that the grant of backwages has been modified by this Court in its earlier order dated 30.4.08 in W.P. No.9257/98, this Court has never denied backwages to the petitioner, but merely modified the quantum of backwages to be paid to the petitioner and, therefore, it must be construed that the backwages were indeed allowed to the petitioner, but only to the extent as modified by this Court in the abovesaid order. Once the backwages was allowed, whatever amount is ordered by this Court, the natural corollary of such order was to count the service, including the period of non-employment of the petitioner, as any other interpretation would be that it is an additional punishment inflicted on the petitioner apart from the order of dismissal from service, though the order of dismissal from service has been set aside by the Labour Court and ordered reinstatement, which reinstatement has been confirmed by this Court, including continuity of service with all other attendant benefits.

14. Although the learned counsel for the respondent Corporation laid great emphasis on the number of punishments imposed on the petitioner during his original period of employment and also during the re-employed period, nevertheless, such repeated imposition of penalties on the petitioner may not have any bearing on the entitlement of the petitioner for counting his service towards pensionable service. In view of the Labour Court awarding reinstatement with continuity of service, as a consequence of such award, the petitioner is deemed to have continued in service and in which event, the petitioner is entitled to all the benefits, including counting of service.

15. As regards the issue of contribution for the period of non-employment is concerned, this Court is of the considered view that the petitioner being a retired employee cannot be expected to make contribution today for the entire period of non-employment. In the said circumstances, on equitable consideration, this Court directs the respondent Corporation to deduct the contribution payable on behalf of the employee for the period of non-employment of the petitioner by making such deduction from the arrears of pension payable to the petitioner and it is made clear that the period of non-employment shall also be counted for the purpose of calculating the pensionary benefits.

16. In the above circumstances, the respondent Corporation is directed to initially deduct the amount from the arrears of pension payable to the petitioner towards the contribution as payable on behalf of the petitioner for the period of his non-employment and after such deduction, the entire service,

including non-employment period shall be counted for the purpose of calculating pension and pension shall be recalculated and paid to the petitioner, less the pension already paid to the petitioner. The respondent Corporation is directed to carry out and complete the above exercise within a period of twelve (12) weeks from the date of receipt of a copy of this order. This order is being passed under exceptional circumstances of the case, since according to the learned counsel for the petitioner, the petitioner was not informed that the non-contributory period would not be counted towards pensionable service as per sub-clause (e) of Clause 10 in Part-IV of the pension regulation, which is extracted above, which fact is also not disputed by the respondent Corporation.

17. In the result, this writ petition is allowed in terms as indicated above. However, in the circumstances of the case there shall be no order as to costs.

Sd/-  
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

GLN  
To

1. The Managing Director  
Tamil Nadu State Transport  
Corporation (Salem) Ltd.  
Dharmapuri Region  
Ramakrishna Road, Salem - 7.

2. The Administrator  
Tamil Nadu State Transport  
Corporation Employees Pension Fund  
Pallavan Salai, Chennai 600 002.

+1cc to Mr.S.T.Varadarajulu, Advocate Sr.29368

W.P. NO.25105 OF 2018

rk[co]  
srg 9/5/2019