



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 23.09.2019**

**CORAM:**

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**

**and**

**THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.A. (MD) No.287 of 2019**

**and**

**C.M.P. (MD) No.2344 of 2019**

- 1.The Administrative Officer  
Pension Authority  
Tamil Nadu State Transport Corporation  
Pallavan Salai, Chennai-2 ... Appellants/  
2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent
  - 2.Branch Manager  
Tamil Nadu State Transport Corporation  
Vanarapattai, Tirunelveli
  - 3.The Administrative Officer  
Tamil Nadu State Transport Corporation  
Tirunelveli Zone, Tirunelveli ... Appellants/  
Review Applicants/ 2<sup>nd</sup> and 3<sup>rd</sup> Respondent
- vs-
- R.Kumar ... Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 30.10.2018, passed in Rev.Aplw.(MD) No.53 of 2018 against the order dated 23.03.2018 in W.P.(MD) No.3708 of 2018.

Prayer in REV.APLC(MD). 53/ 2018 :

This Application filed Under Section 114 and Order 47 of CPC, against the Writ petitions order in WP(MD)No.3708 of 2018 dated 23.03.2018 passed by this court.

Prayer in WP(MD). 3708/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to issue a pension benefit by way of the representation and by considering the petitioner's representation dated 06.02.2018.



For Appellants : Mr.K.Chellapandian  
Additional Advocate General  
Assisted by Mrs.S.Srimathy  
Special Government Pleader

For Respondent : Mr.V.Balasubramanian

**J U D G M E N T**

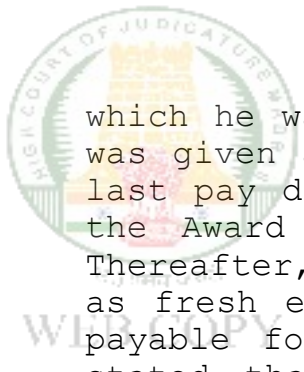
**[Judgment of the Court was made by T.S.SIVAGNANAM, J.]**

This writ appeal by the Administrative Officer, Pension Authority, Tamil Nadu State Transport Corporation and two others, is directed against the order dated 30.10.2018 passed in Rev.Aplw.(MD) No.53 of 2018 against the order dated 23.03.2018 passed in W.P.(MD) No.3708 of 2018.

2. In this appeal, we shall refer the appellant as "the Management" and the respondent as "the workman".

3. The workman was working as Conductor in the second appellant Corporation having been appointed to the said post on 05.11.1987. His services were regularized on 17.12.1988. During 2000, it appears that the workman was referred to the Medical Board in Tirunelveli Medical College Hospital to assess his health condition. Based upon a report submitted by the Dean of Tirunelveli Medical College Hospital, the workman was discharged from service by order dated 17.10.2000, on the ground that he was suffering from Chronic Asthama and the symptoms may aggravate on exposure to allergy (dust). The Management issued notice to the workman, dated 20.09.2000, proposing to discharge him from duties on the ground that he is unfit to discharge duties as Conductor. On receipt of the notice, it appears that the workman gave a reply, in which according to the Management, the workman accepted that he is unfit to discharge duties as Conductor. Consequently, the order of discharge from service was passed on 17.10.2000.

4. It is true that the workman did not take immediate steps thereafter to question the order of discharge from service. But, nevertheless, in the year 2004, the workman raised a dispute before the Labour Court, Tirunelveli, in I.D.No.124 of 2004 and sought for setting aside the order of discharge from service and to reinstate him in service as Conductor with continuity of service with full backwages. The dispute was pending before the Labour Court for nearly three years and by award, dated 30.11.2007, the prayer sought for by the workman to reinstate him as Conductor with backwages and continuity of service was rejected. Alternatively, the Labour Court directed that the workman should be given an alternative employment for the period of non-employment i.e. from 17.10.2000, the date on



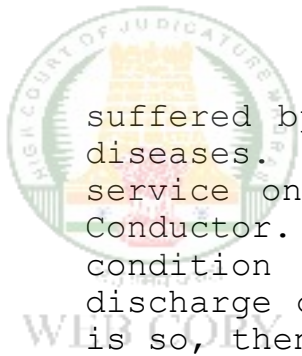
which he was discharged from duty, to 22.08.2008 the date on which was given alternative employment and he should be given 50% of his last pay drawn. Neither the Management nor the workman challenged the Award passed by the Labour Court and it attained finality. Thereafter, the Management appointed the workman as Non ITI Helper as fresh entrant, by order dated 22.08.2008. The amount of wages payable for the period of non-employment was computed and it is stated that 50% of those wages have been paid and that apart, whatever retirement benefits payable to the workman have been fully settled.

5. Subsequent to the Award of the Labour Court, the workman was appointed as Non ITI Helper and served in the said post and attained the age of superannuation on 30.06.2016. After attaining the age of superannuation, the workman submitted a representation on 06.02.2018 for payment of pensionary benefits. This representation was not considered and therefore, the workman filed W.P.(MD) No.3708 of 2018 and the writ petition was allowed and the Management was directed to settle all the workman's pensionary and other retiral benefits, within a stipulated time.

6. It appears that the orders passed by the Writ Court were not complied with and Cont.P.(MD) No.1161 of 2018 was filed, after which, on 03.09.2018, the Management computed the benefits payable to the workman, which according to them, is the amount, which the workman is entitled to and the same has been disbursed. Thereafter, the Management filed Rev.Aplw (MD) No.53 of 2018 to review the orders and directions issued in the writ petition.

7. In the said review application, arguments were advanced stating that the workman is not entitled to any relief and in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short "the Act") and the Labour Court having denied the continuity of service and the workman having accepted the alternative employment as a fresh entrant, nothing is payable as compensation, because, by then, the new Pension Scheme has come into vogue. The Writ Court considered the said submission and dismissed the review application. This is how, the Management is before this Court.

8. The first aspect to be considered is that whether the workman is entitled for protection under Section 47 of the Act. It is not the case of the Management that the workman sought for being discharged on the ground of medical incapacity. It is the Management, which sought to invalidate the workman on the ground that he is medically unfit to discharge his duties as Conductor. This being the reason, he was referred to the Medical Board and based on the report submitted by the Medical Board, the order of discharge from service was passed. This could not have been done in terms of Section 47 of the Act. The ailment said to have been



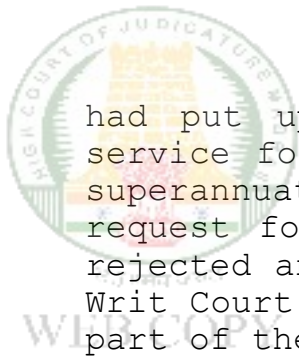
suffered by the workman is stated to be not one of the ailments / diseases. Therefore, the Management discharged the workman from service on the ground that he is unfit to perform his duties as Conductor. We do not wish to go into the aspect as to whether the condition of the workman has been aggravated on account of the discharge of his duties and responsibilities as Conductor. If that is so, then Section 47 of the Act will apply in full force.

9. The delay caused in the disposal of the industrial dispute cannot be put against the workman. The delay in approaching the Labour Court in the year 2004 cannot also be put against the workman and the Management had not contested the entertaining of the industrial dispute. The Management's case rests upon the Award passed by the Labour Court rejecting the claim of continuity of service and reinstatement. Therefore, it is submitted that the question of payment of pension or including the period when the workman was out of service for computing the total length of service, is not sustainable.

10. When we read the Award passed by the Labour Court, it is amply clear that the relief sought for by the workman, namely, reinstatement into service as Conductor with backwages and continuity of service, has been denied by the Labour Court. The Labour Court being conscious of the effect of Section 47 of the Act directed alternative employment to be offered. Further, the Labour Court directed that the full wages payable by the Management to the workman for the period during which he was working as Conductor should be computed and 50% of which should be paid. Thus, it goes without saying that the period during which, the workman was out of service was to be reckoned for all purposes. However, the Labour Court, in its discretion, awarded only 50% of the wages. Therefore, this can hardly be a reason for the Management to deny the length of service, during which the workman was not offered alternative employment.

11. An argument was put forth by the learned Additional Advocate General that the appointment of the workman as Non ITI Helper, by order dated 22.08.2008, is a fresh appointment. Therefore, no right accrues to the workman in that regard. We do not accept the said submission, because, if the Award of the Labour Court is read in its entirety, the workman cannot be accommodated as a fresh entrant as the period of non-employment was to be reckoned, wages were directed to be computed and disbursal of the benefits was restricted to 50%.

12. One more argument advanced by the learned Additional Advocate General was that after the workman was appointed in the year 2008, for the first time, he had approached this Court in the year 2018 praying for direction to grant pension. From the chain of events, which we have narrated above, it is seen that the workman



had put up with alternative employment offered and continued in service for nearly eight years and retired on attaining the age of superannuation on 30.06.2016. It is only thereafter when he made a request for grant of pension, the same was neither considered nor rejected and this gave a cause of action to the workman to move the Writ Court. Therefore, we find that there is no delay or laches on part of the workman.

**13.** It may be true that there is a slight factual error in the order passed by the Writ Court. Nevertheless, the Writ Court correctly construed the effect of Section 47 of the Act and Rule 19 (e) of the Pension Rules and rejected the review application filed by the Management.

**14.** In the light of the reasons assigned by us in the preceding paragraphs as well as considering the reasons assigned in the order passed in the review application, we find no ground to interfere with the orders passed in the review application.

**15.** For the above reasons, the writ appeal fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

Krk

+1CC TO MR.S.SRIMATHY, Advocate Sr. No.89754  
+1CC TO MR.V.BALASUBRAMANIAN, Advocate Sr. No.88667  
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 88844

**W.A. (MD) No.287 of 2019**  
**and**  
**C.M.P. (MD) No.2344 of 2019**  
**23.09.2019**

CS (CO)  
TR(14.10.2019) 5P 4C