



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A(MD)NO.456 OF 2019
and
C.M.P(MD)No.3787 of 2019

- 1.The Management of Tamil Nadu State Transport Corporation(Madurai)Limited,
represented by its Managing Director,
Bye-Pass Road,
Madurai -10.
- 2.The General Manager,
Tamil Nadu State Transport Corporation
(Madurai)Limited, Madurai Region,
Madurai.
- 3.The Administrator,
Tamil Nadu State Transport Corporation
Pension Fund Trust,.
Thiruvalluvar House,
Pallavan Salai,
Chennai.

:Appellants/Respondents

.vs.

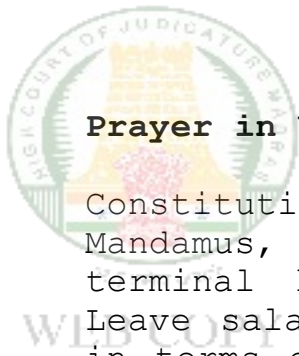
K.Ramesh,
Son S.Kanthasamy,
Bus Body Sweeper(Retired),
Staff No.SR.12318, Tamil Nadu State
Transport Corporation(Madurai)Limited,

Residing at

No.193, S.R.V.Nagar Main Road,
Harvipatti, Thirunagar Post,
Thirupparankundram,
Madurai-6.

: Respondent/Writ Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent
<https://hcservices.ecourts.gov.in/hcservices/>
praying this Court to set aside the order passed by this Court in
W.P(MD)No.12390 of 2016, dated 05.09.2018.



Prayer in WP(MD). 12390/ 2016 :

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 settle the petitioners terminal benefits including monthly pension, gratuity, earned Leave salary, pay revision arrears from 01.09.2013 to 31.01.2015 in terms of settlement under Section 12(3) of the I.D.Act, 1947, bonus and incentive for the years 2004-05, 2005-06 and 2006-07 with interest at the rate of 18% per annum payable from the date of retirement i.e., from 31.01.2015 to till the date on which the said benefits are settled to the petitioner.

For Appellants

:Mrs.Srimathy
Special Govt.Pleader

For Respondent

:Mr.Ajay Gos
for Mr.A.Rahul

JUDGMENT

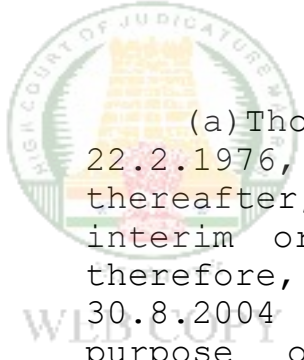
[Judgment of the Court was made by **K.RAVICHANDRABAABU, J.**]

Aggrieved against the order of the Writ Court, the respondents therein have chosen to file the present Writ Appeal.

2.The said Writ Petition was filed by the respondents herein for a mandamus directing the respondents to settle the Petitioner's terminal benefits including monthly pension, gratuity, Earned Leave Salary, Pay Revision Arrears from 1.9.2013 to 31.1.2015 in terms of settlement under Section 12(3) of the Industrial Disputes Act, 1947, bonus and incentive for the years 2004-05, 2005-06 and 2006-07, with interest at the rate of 18% per annum payable from the date of retirement i.e., from 31.1.2015 to till the date on which the said benefits are settled to the Petitioner.

3.Before the Writ Court, the management opposed the relief sought for in the Writ Petition by contending that the Writ Petitioner was appointed only on 1.4.2003 and therefore, he is not entitled to get pension. The Writ Court rejected the said contention and ordered for sending the proposal for pension by specifying the date of joining as 1.4.1988, in order to enable the Administrator, Tamil Nadu State Transport Corporation Pension Fund Trust to process the application and extend the benefit of pension including the arrears that may be payable to the Petitioner.

<https://hcservices.courts.gov.in/hcservices/>
1.The sum and substance of the contention raised in this Writ Appeal are as follows:



(a) Though the Writ Petitioner was earlier appointed on 22.2.1976, however, he was dismissed from service on 31.7.1981 and thereafter, he was reinstated into service in pursuant to the interim order passed by the Apex Court on 30.08.2004 and therefore, his service period has to be counted only from 30.8.2004 and not from the date of original appointment, for the purpose of considering the pension. In other words, the respondent/Workmen is not entitled to continuity of service in pursuant to his reinstatement into service on 30.8.2004.

(b) Secondly, in pursuant to the introduction of Contributory Pension Scheme, the employees who are appointed after 1.4.2003 are not eligible to get pension from the Tamil Nadu State Transport Corporation Pension Fund Trust and that they are entitled to get only under the Contributory Pension Scheme.

5. On the other hand, the learned counsel appearing for the respondent/workmen contended that when the termination of service of the respondent was set aside by the Labour Court by passing an award on 3.12.1991, with a direction for reinstatement and also for paying back-wages, which award was confirmed by the Writ Court as well as in Writ Appeal, the management is not entitled to contend that the respondent/workmen is not entitled for the continuity of service, more particularly, when the Apex Court has not disturbed the portion of award granted by the Labour Court granting continuity of service.

6. Heard both sides.

7. There is no dispute to the fact that the respondent herein was originally appointed as Bus Body Cleaner in the appellants/Corporation on 22.2.1976. It is true that the respondent along with similarly situated persons were terminated from their service by the first appellant on 31.7.1981. The said termination was challenged by the aggrieved parties including the Writ Petitioner herein before the Labour Court, which in-turn passed an award in I.D.No.34 of 1988, dated 3.12.1991, wherein and whereby, it was found that the termination was bad and the Writ Petitioner and others are entitled for reinstatement with continuity of service. The Labour Court also observed that insofar as the back-wages is concerned, they are entitled for the salary from 1.4.1988. The said award of the Labour Court was put to challenge by the Management before the Writ Court in W.P.No.5016 of 1992. The Writ Court after considering the case of both parties, by order, dated 1.9.1999, dismissed the Writ Petition. Challenging the said order, W.A.No.2395/1999 was filed by the Management which in-turn was also dismissed on 4.4.2003 thereby confirming the order of the Writ Court. Further challenge before the Apex Court was made by the Management in Special Leave to Appeal (Civil) No.15933 of 2003, wherein, an interim order passed on 30.07.2004, reads as follows:



'Learned Senior Counsel for the Petitioner states that the Petitioner is ready to reinstate the respondents and in that regard, a letter was also issued to them on 13.5.2004 advising them to report for duty.

Learned counsel for the respondents states that the respondents are ready and willing to report for duty and some time may be granted.

The respondents to report for duty to the Petitioner/Corporation on or before 30th August, 2004. As far as payment is concerned, it shall be at the same rate which the respondents were receiving before the termination.

List the matter for final disposal on a Friday, after eight weeks.'

8. Thereafter, the main appeal itself was taken up by the Apex Court for final disposal and on 28.09.2006, after hearing both parties, the Apex Court passed the following order thereby disposing the Civil Appeal:

'We have heard Mr. V. Ramasubramanian, learned counsel for the appellant and Mr. V. J. Francis, learned counsel for the respondents. We have perused all the orders impugned in this Civil Appeal. This Court while entertaining the Special Leave Petition on 8.9.2003 issued notice to the respondents confined to grant of pay-scale and also in relation to back-wages. By order dated 30.7.2004, this Court, after recording the statement made by the learned counsel for the respondents that the respondents are ready and willing to report for duty and some time may be granted, passed an order directing the respondents to report for duty to the appellant/Corporation on or before 30th August, 2004. As far as payment is concerned, this Court said that it should be at the same rate which the respondents were receiving before the termination. By order dated 1.10.2004, leave was granted.

We heard the arguments of the respective counsel appearing on either side. Since the matter raises a very short question, we do not propose to deal with the matter in extenso. Suffice it to say that the respondents, who were reinstated in service on 30.8.2004, will be paid salary from that date at par with the similar persons placed in the similar post. We also make it clear that the respondents will not be entitled to any back-wages. During the pendency of the proceedings before the High Court, a sum of Rs. 11,500/- per workman was directed to be deposited, as directed by the High Court, the respondents are at liberty to withdraw the same from the said court



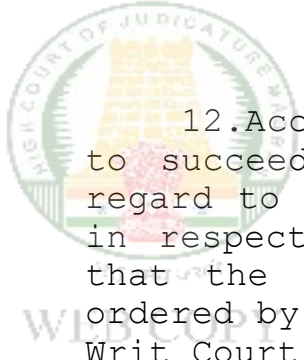
without furnishing any security. If for any reason, the amount is not deposited, the appellant/Corporation is directed to pay a sum of Rs.11,500/- with interest, if accrued, to each workman within one month from today.

The Civil Appeal is accordingly disposed of with no orders as to costs.'

9.A careful perusal of the above-referred orders passed by the Labour Court, this Court in Writ Petition as well as in the Writ Appeal and the order passed by the Apex Court, would reveal that the order of the Labour Court was not interfered with, either in respect of its direction for reinstatement or for grant of continuity of service to the workmen. The order of the Apex Court clearly indicates that the workmen who was reinstated on 30.8.20104 will be eligible to get salary from that date on par with similarly situated persons placed in the similar posts, also by making it very clear that the workmen are not entitled for back-wages. There is no dispute to the fact in pursuant to the interim order passed by the Apex Court, the Petitioner and others were reinstated into service. In this case, the respondent was reinstated on 30.8.2004. By taking note of such date of reinstatement, as the date of appointment of the respondent afresh, the appellants refused to grant pension by contending that the respondent is not entitled for continuity of service.

10.We are unable to accept the above contention of the appellants in view of the order passed by the Labour Court, which culminated into an order passed by the Apex Court, wherein, it was clearly stated that the workmen are not entitled only for back-wages and that the salary will be paid to them from the date of their reinstatement into service. Thus it is evident that the Apex Court has not set aside the finding of the Labour Court which was confirmed by this Court in Writ Petition and Writ Appeal with regard to the continuity of service. Therefore, We are of the view that the appellants/Management are not entitled to deny the continuity of service to the respondent. In other words, the appellants are not entitled to contend that the date of appointment of the respondent is only 30.8.2004, as if it is a fresh appointment, without considering the fact that the respondent was appointed originally on 22.2.1976 and the direction to grant continuity of service was not interfered with by the Apex Court.

11.The next contention of the appellants that in view of the introduction of the Contributory Pension Scheme, the persons appointed after 1.4.2003 are not eligible to get pension, is also liable to be rejected, for the simple reason that the respondent herein was not appointed on or after 1.4.2003 and on the other hand, he was appointed on 22.2.1976 much before the introduction of the Contributory Pension Scheme.



12. Accordingly, We find that the appellants are not entitled to succeed in this Writ Appeal in respect of their claim with regard to the relief granted in favour of the respondent/workmen in respect of continuity of service. However, We make it clear that the respondent/workmen is not entitled to back-wages as ordered by the Apex Court. To that extent, the order passed by the Writ Court is modified.

13. It is stated that the respondent has not made any contribution as employees contribution and therefore, the learned Special Government Pleader appearing for the appellants submitted that the appellants may be directed to send appropriate proposal by taking note of the said fact. If that be the case, it is for the appellants to make appropriate proposal within six weeks from the date of receipt of a copy of this order and send the same to the authorities for grant of pension.

14. The Writ Appeal stands disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Management of Tamil Nadu State Transport Corporation (Madurai) Limited,
represented by its Managing Director,
Bye-Pass Road, Madurai -10.

2. The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited, Madurai Region, Madurai.

3. The Administrator,
Tamil Nadu State Transport Corporation
Pension Fund Trust, .
Thiruvalluvar House,
Pallavan Salai, Chennai.

+1 CC TO Mr. A. Rahul, ADVOCATE IN SR No. 75973.

JUDGMENT MADE IN
W.A (MD) NO. 456 OF 2019
and
C.M.P (MD) No. 3787 of 2019
17.07.2019