



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**W.P.(MD)No.21617 of 2017

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K.Rangaswami

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by its Secretary to Government,
Transport Department,
Fort St.George, Chennai -1.

2.The Accountant General,
Pension 29 Section,
D.M.S.Nandanam, Chennai - 600 018.

3.The General Manager,
Tamil Nadu State Transport Corporation
(Tirunelveli) Limited,
(A Government of Tamil Nadu Undertaking),
No.19, Trivandrum Road,
Vannarapettai Post, Tirunelveli - 627 003.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pursuant to the impugned order passed by the third respondent in his Letter No.4260/Nir.9/Tha.A.Po.Ka/Thili/2006, dated 18.07.2017, and consequential impugned order passed by the first respondent in Letter No.12497/EPa.1/2013-12, dated 20.07.2017, quash the same as illegal and consequently to direct the respondents to sanction pension to the petitioner with effect from 17.04.1982 as per G.O.Ms.No.42, Transport Department, dated 27.05.2005 and to pay all arrears with interest.

For Petitioner	: Mr.H.Christopher
For R1	: Mrs.J.Padmavathi Devi
	Special Government Pleader
For R2	: Mr.P.Gunasekaran
For R3	: Mr.K.Sathyasingh

ORDER

Seeking to quash the impugned orders passed by the third and first respondents, dated 18.07.2017 and 20.07.2017, respectively, and for a direction to the respondents to sanction pension to the petitioner as per G.O.Ms.No.42, Transport Department, dated 27.05.2005 and to pay all arrears with interest, the present writ petition has been filed.



2. Heard the learned Counsel appearing on both sides and perused the materials available on record.

3. The learned Counsel for the petitioner submitted that the petitioner was appointed as Conductor on 24.08.1965 and he was subsequently regularised by the respondent Transport Corporation. While so, he was dismissed from service on 17.04.1982. As against the said dismissal order, he raised Industrial Dispute before the Deputy Commissioner of Labour and a settlement under Section 12(3) of the Industrial Disputes Act, 1947, was reached between the parties on 07.10.1982. In spite of the said settlement reached between the parties, no benefit has been given to the petitioner and the petitioner has not been reinstated into service. In this regard, the petitioner has given representations on 20.05.2006, 21.07.2006, 02.01.2007 and also on 10.11.2007. However, without considering the plea raised by the petitioner, the third and first respondents have passed the impugned orders, dated 18.07.2017 and 20.07.2017, respectively, thereby, the pensionary benefits sought by the petitioner has been denied. Challenging the same, the present writ petition has been filed.

4. Upon instructions, the third respondent filed a counter affidavit, the relevant portion of which reads as hereunder:

"7. I submit that under the facts and circumstances stated above in detail, the contra allegations made in para 2 to 11 and the grounds in the affidavit of the writ petitioner all are not correct and they are denied the contra allegation that the petitioner as per the settlement under Section 12(3) of I.D. Act, that the Conductors are permitted short remittance upto Rs.5/- and the one who is responsible for such short remittance should make good of it before commences next duty, that the short remittance upto Rs.20/- is permitted, that the short remittance which is not a misconduct under standing orders, that the same is binding on both parties, that the corporation here acted without authority while inflicting the punishment in respect of these 3 workers, that the judgment in W.P.(MD)No.8760 of 2007, dated 06.12.2007, that G.O.Ms.No.42, that the rejection of pension under Rule 21 of Government Pension does not applies, that the adopting different yard sticks are all not correct totally and not correct in every particulars. They are denied."

5. The learned Counsel appearing for the petitioner submitted that in spite of Section 12(3) settlement, the benefits have not been conferred on the petitioner. Relying upon the order of this Court made in W.P.(MD)No.11412 of 2013, dated 28.02.2017, the learned Counsel submitted that the issue involved in this case has already been decided in the above said case. The relevant paragraphs of the said order read as follows:



"7.It is not in dispute that the petitioner while he was working as Conductor in the respondent Corporation was removed from service on 17.04.1982. The said termination order was the subject matter in the 12(3) Settlement reached between the parties and as per the said settlement, the order of termination has been adjudged as order without authority and therefore, the same is liable to be set aside.

8.In view of the settlement reached by the parties, which has been accepted by the third respondent Corporation, the only reason adduced through the impugned order dated 27.08.2012 is that the petitioner had been removed from service on 17.04.1982 and therefore, he would not be entitled for pensionary benefits, cannot be held good. Moreover, in this kind of situation as noted in the said judgment made in W.P.No.8760 of 2007, dated 06.12.2007, wherein, the learned Judge on paragraph 5 and 6 has given direction to reconsider the issue based on the settlement reached between the parties and while doing so, the denial of service benefits has also to be looked as per G.O.Ms.No.42, Transport Department, dated 27.05.2005. The present fact also squarely falls on the category judgment cited supra. Therefore, this Court is of the considered view that based on the said judgment, as well as the settlement reached between the parties, which has been published, the petitioner shall be entitled to claim pension and the retirement benefits. For this benefits though repeated representation have been made and now since the same has been rejected by the third respondent, this Court feels that while quashing the impugned order, the matter can be remanded to the third respondent for passing appropriate orders.

9.In the result, the Writ Petition is disposed of with the following directions:

(i)the impugned order, dated 27.08.2012 is quashed.

(ii)The matter is remanded back to the third respondent for reconsideration in the light of the settlement between the parties as well as the judgment of this Court made in W.P.No.8760 of 2007 and also on the basis of G.O.Ms.No.42, Transport Department, dated 27.05.2005.

(iii)For the said consideration, necessary proposals have to be forwarded by the Depot Manager or any other in charge, after getting copy of the same from the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(iv)In the light of the above direction, after considering the proposal the third respondent in turn forward the same to first respondent. The first respondent who in turn on receipt of proposal from the third respondent shall pass appropriate orders extending the



pensionary benefits to the petitioner payable to him within a period of six weeks therefrom."

Hence, the learned Counsel prayed for a similar direction in this case also.

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6.The learned Special Government Pleader and the respective standing Counsel have no serious objection for such a prayer.

7.In the light of the decision cited supra which is squarely applicable to the facts of the present case, and also considering the submissions made by the learned Counsel on either side, this Court passes the following order:-

(i)the impugned orders, dated 18.07.2017 and 20.07.2017 are quashed.

(ii)The matter is remanded back to the second respondent for reconsideration in the light of the settlement entered into between the parties as well as the judgment of this Court made in W.P.No.8760 of 2007 and also on the basis of G.O.Ms.No.42, Transport Department, dated 27.05.2005.

(iii)For the said re-consideration, necessary proposals have to be forwarded by the Depot Manager or any other in charge, after getting copy of the same from the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(iv)In the light of the above direction, after considering the proposal, the second respondent shall forward the same to first respondent, who in turn, shall pass appropriate orders extending the pensionary benefits to the petitioner payable to him within a period of six weeks therefrom."

8.The writ petition stands allowed to the extent as indicated above. No costs.

Sd/-

Assistant Registrar (AD-I)

/ True Copy /

Sub Assistant Registrar(CS)

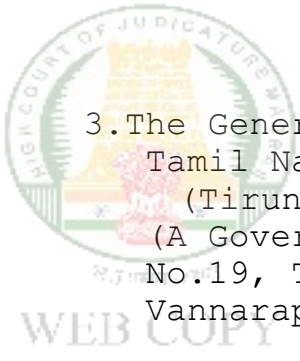
Cmr

To

1.The Secretary to Government,
Transport Department,
Fort St.George, Chennai -1.

2.The Accountant General,
Pension 29 Section,

<https://hcservices.ecourts.gov.in/hcservices/>
D.M.S.Nandanam, Chennai - 600 018.



3.The General Manager,
Tamil Nadu State Transport Corporation
(Tirunelveli) Limited,
(A Government of Tamil Nadu Undertaking),
No.19, Trivandrum Road,
Vannarapettai Post, Tirunelveli - 627 003.

- +1 CC to M/s.B.CHRISTOPHER, Advocate(SR-54264[F] dated 15/03/2019)
- +1 CC to M/s.P.GUNASEKARAN, Advocate(SR-54496[F] dated 15/03/2019)
- +1 CC to M/s.K.SATHIYA SINGH, Advocate(SR-54474[F] dated 15/03/2019)
- +1 CC to M/s.SPL GP(SR-54937[F] dated 19/03/2019)

ORDER MADE IN
W.P. (MD) No.21617 of 2017
15.03.2019

ES/07.05.2019/5P/8C