



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.19740 of 2019

and

W.M.P(MD).No.16229 of 2019

WEB COPY

M.Mahendran

... Petitioner

-Vs-

1.The Secretary to Government

Transport Department

(Chairman of the Board of Directors of
all State Transport Undertakings)

Fort.St.George, Secretariat

Chennai 600 009

2.The Management

Tamil Nadu State Transport Corporation

Madurai Kottam,Puravalisalai, Madurai

3.The Assistant Manager (Department of Labour Welfare)

Tamil Nadu State Transport Corporation

Madurai Kottam

Puravalisalai, Madurai

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the 3rd respondent, dated 30.08.2019 in பார்வை:தொ.ந.து/332/2019 and quash the same and consequently direct the 2nd respondent to pay pension.

For Petitioner : Mr.M.Subash Babu

For R1 : Mr.V.Anand

Government Advocate

For R2 & R3 : Mr.S.Senthil Kumariah

ORDER

The writ petition has been filed to call for the records of the impugned order passed by the 3rd respondent, dated 30.08.2019 in பார்வை:தொ.ந.து/332/2019 and quash the same and consequently, direct the 2nd respondent to pay pension.

2.The petitioner was appointed as a Driver in the second respondent Corporation on 20.04.1985 and subsequently, his service was regularized on 01.09.1986. While the petitioner was in service, he was dismissed from service on 14.02.1991. Hence, the petitioner raised an Industrial Dispute in I.D.No.8 of 1993 before the Labour Court, Madurai. After hearing the case, the Labour Court, Madurai, by an award dated 13.11.2008, ordered reinstatement with continuity



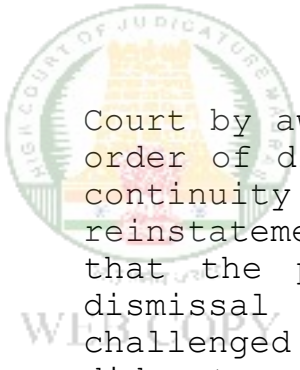
of service, but without back wages. The respondents have not challenged the said award and therefore, the said Award has become final. Even after 2 ½ years of the Labour Court award, the respondents have not reinstated the petitioner into service. The petitioner filed W.P(MD).No.3832 of 2011, seeking a direction to implement the order of Labour Court, dated 13.11.2008. This Court, by the order dated 20.04.2011, directed the second respondent to reinstate the petitioner into service, within a period of one month. In view of the same, the petitioner was reinstated into service on 16.03.2013 with continuity of service, but without back wages. In this circumstances, the petitioner attained the age of superannuation on 31.05.2019. The request of the petitioner for pension was rejected by the respondents on the ground that the petitioner worked only 5 years, 9 months and 2 days. As per Rule 16 (a)(i) of the Tamil Nadu Pension Rules, he is not entitled for pension and rejected the claim of the petitioner, for pension. Aggrieved over the said order, the petitioner has come up with the present Writ petition.

3.The learned counsel appearing for the petitioner contended that the order of dismissal dated 14.02.1991 was set aside by the Labour Court in the award dated 13.11.2008 and Labour Court directed the respondents to reinstate the petitioner into service with continuity of service. In view of the same, the petitioner is deemed to be in service from the date of dismissal to the date of reinstatement and it must be taken as duty period. The respondents reinstated the petitioner in service on 16.03.2013 with continuity of service, but without back wages. Therefore, the petitioner is entitled for pension. Hence, he prayed for allowing this Writ petition.

4.The second respondent filed a counter affidavit. Mr.S.Senthil Kumariah, learned counsel appearing for the respondents 2 and 3 contended that after the award of the Labour Court and the order of this Court, dated 20.04.2011, a settlement under Section 18 (1) of the Industrial Dispute Act, was entered into between the petitioner and the respondents. As per the said settlement, the petitioner has agreed for reinstatement with continuity of service without back wages and other benefits. W.P(MD).No.11015 of 2013 was filed by the petitioner for fixation of salary on par with his Junior is pending. Hence, he prayed for dismissal of this Writ petition.

5.Heard Mr.M.Subash Babu, learned counsel appearing for the petitioner, Mr.V.Anand learned Government Advocate appearing for the first respondent and Mr.S.Senthilkumariah, learned counsel appearing for the respondents 2 and 3.

6.From the materials on record, it is seen that the petitioner was dismissed from service on 14.02.1991. The Labour



Court by award dated 13.11.2008, in I.D.No.8 of 1993, set aside the order of dismissal of the petitioner and ordered reinstatement with continuity of service. When the order of dismissal is set aside and reinstatement with continuity of service is ordered, it is deemed that the petitioner has continuity of service from the date of dismissal till the date of reinstatement. The respondent has not challenged the award of the Labour Court, dated 13.11.2008 and also did not reinstate the petitioner in service immediately. Even after the order of this Court, dated 20.04.2011 in W.P(MD).No.3832 of 2011 filed by the petitioner, to implement the award of the Labour Court, seeking for reinstatement, the respondents reinstated the petitioner only on 16.03.2013 i.e. after two years of order of this Court and five years of award of the Labour Court, dated 13.11.2008. The respondent having failed to challenge the award of the Labour Court and allowing it to become final, is not entitled to deny the pension to the petitioner on the ground that the petitioner did not complete the required period of 10 years of service for getting pension. Therefore, the reason given in the impugned order of the third respondent is erroneous, invalid and illegal. The respondents are directed to take into account the entry into service by the petitioner from 1986, till 31.05.2019, the date on which, he retired from service on attaining the age of superannuation. The respondents are directed to fix and pay the pension on par with his immediate Junior of the petitioner. Therefore, the impugned order of the third respondent dated 30.08.2019, in பார்வை:தொ.ந.து/332/2019, is liable to be set aside and accordingly, it is set aside and this Writ petition is allowed. The respondents are directed to pay pension to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

Msa

+1 CC to Mr.M.SUBASH BABU, Advocate (SR-95037[F] dated 31/10/2019)
+1 CC to M/s.SPL GP (SR-95154[F] dated 31/10/2019)
+1 CC to Mr.J.SENTHIL KUMARAIAH, Advocate (SR-95120[F] dated 31/10/2019)

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